(16,832.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 268.

S. ENDICOTT PEABODY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 UNITED STATES OF AMERICA, } ss:
Territory of New Mexico, }

Be it remembered that heretofore, to wit, on the 28th day of February, A. D. 1893, there was filed in the office of the clerk of the court of private land claims, at the city of Santa Fé, Territory of New Mexico, a petition; which said petition is in the words and figures following, to wit:

2 *Petition in the Matter of Private Land Claim "Vallecito de Lovato."*

In the United States Court of Private Land Claims for the Territory of New Mexico, Sitting at Santa Fé.

MEREJILDO MARTINEZ, ANDRES C. GALLEGOS, FRANCISCO JARAMILLO, Antonio A. Trujillo, Jose Ramon Martinez y Lucero, Beningno C. Hernandez, Jose Pedro Duran, Antonio Maria Ortega, Jose Damian Gallegos, Patrocionio Valdez, Jose Jerman Griego, Juan T. Ortega, Policarpio Martinez, Jose Martin Trujillo, Juan Trujillo Encarnacion Medina, Baltazar Martinez, Jose Ramon Martinez y Maestas, Lucas Gallegos, Juan L. Jaramillo, Manuel Jaquez, Leocadio Giron, J. M. Giron, Juan de Dios Griego, Jose Leon Chacon, Francisco Vargas, Casimiro Chacon, Hermenejildo Trujillo, J. Vicente Martinez, Juan Ignacio Martinez, Maria Teresa Medina, Ramon Chacon. Antonio A. Gallegos, Margarito Martinez, Maria Ygnacia Martinez, Maria de la Cruz de Herrera de Luna, Juan Luna, Plaintiffs,

versus

THE UNITED STATES OF AMERICA and THOMAS B. CATRON, Defendants.

3 Petition.

To their honors the judges of said court:

Your petitioners respectfully represent:

1. That they are the heirs-at-law and legal representatives of Jose Rafael Zamora and his associates, and as such make claim to and assert ownership in fee to the lands and premises known as and called the town of Vallecito or Vallecito de Lovato, situate in the county of Rio Arriba, in the Territory of New Mexico, containing 114,000 acres, more or less, and located and bounded as follows: On the north the source of the Ojo Caliente river, on the east the tableland of the Jara, on the south the point on said river known as the Little ford, and on the west the mountain ridge known as the Horse Valley ridge.

2. That on February 23, 1824, Jose Rafael Zamora and twenty-five other residents of the district of Ojo Caliente submitted to Francisco Trujillo, constitutional alcalde of the district in which said tract is situate, their petition for a grant of said lands for the purpose of ag-

riculture, the same being then vacant, said petition being signed by said Zamora for himself and "for all those stated," a copy of which is herewith filed, marked "Exhibit A," and made part of this petition.

3. That said alcalde certified to the political chief of the province, at Santa Fé, his approval of said petition, and on February 27, 1824, Governor Bartolome Baca, the political chief of said province of New Mexico, issued a decree granting to said petitioners the tract of land above described and directed said Trujillo to place them in juridical possession of the granted premises, a copy of which decree is herewith filed, marked "Exhibit B," and made part of this petition.

4. That on September 22, 1824, said Trujillo, in obedience to the decree of said governor of February 27, 1824, delivered to said grantees juridical possession of said premises and assigned
4 the several portions thereof to said grantees in accordance with the laws, usages, and customs then in force in said Territory. (A copy of the certificate of said possession and distribution, signed by said alcalde, is herewith filed, marked "Exhibit C," and made part of this petition.)

5. That by virtue of said grant and delivery of juridical possession said grantees became vested with a complete and perfect title to the tract known and described as the Vallecito de Lovato, including the entire quantity of land thus designated at the date of said grant; that by virtue of said grant and possession said tract was severed from the domain of Mexico, and consequently did not pass to the United States by the cession under the treaty of Guadalupe Hidalgo or otherwise, but continued to remain the private property and estate of said grantees, their heirs, assigns, and legal representatives.

6. That on May 15, 1875, your petitioners and those under whom they claim, to wit, the inhabitants of the town of Vallecito residing on and in possession of said tract of Vallecito de Lovato, presented to the surveyor general of New Mexico (James K. Proudfit) their claim for examination and decision under section 8 of the act of 1854, with a view to its confirmation by Congress; that on May 20, 1875, and on divers other days thereafter said surveyor general heard the testimony of witnesses, examined the records and exhibits in reference to the validity of said grant and the facts as to possession and title of the claimants, and on October 13, 1875, upon such examination and consideration, decided that said claim was valid and recommended the same to Congress for confirmation.

7. Plaintiffs are advised that a portion of the northern part of said tract is claimed by the grantees or their successors under the Tierra Amarillo grant, which grant, as plaintiffs are informed, was made in 1832, has been confirmed by Congress, and was patented in 1871. The Vallecito de Lovato grant now before the court is a perfect grant and is senior to the Tierra Amarilla grant, having been made and juridical possession having been delivered to the grantees six years prior thereto, and the patent for said tract, not having issued until 47 years after the grantees had acquired

perfect title to said premises (which, as before stated, never belonged to the United States), conveyed to the patentees no title or interest in any of the lands within the boundaries of the Vallecito de Lovato tract. Your petitioners are informed and believe that Thomas B. Catron claims to own the said Tierra Amarilla grant.

8. Plaintiffs allege that, with the exception named in paragraph 7 of this petition, there are no adverse holders or possessors of any part of their said tract, and that said grant does not conflict in whole or in part with any claim derived from the Spanish or Mexican government.

9. That there are no gold, silver, or quicksilver mines or minerals within the boundaries of said tract.

10. That said grant has never received final action by Congress or any department or tribunal of the United States.

11. Petitioners file herewith a sketch map of said tract, marked "Exhibit D," which they pray may be taken as part of this petition.

Wherefore your petitioners pray that their claim and title to the premises in question may be inquired into and decided by this court.

GEORGE HILL HOWARD,
JEFFRIES & EARLE,
Petitioners' Attorneys.

And be it further remembered that thereafter, to wit, on the 2d day of March, A. D. 1893, there was filed in the office of the clerk of said court, at Santa Fé, Territory of New Mexico, a petition; which said petition is in words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Sitting at Santa Fé, in the Territory of New Mexico.

S. ENDICOTT PEABODY, Petitioner,
vs.
THE UNITED STATES, Defendant.

To the hon. chief justice and associate justices of the said court of private land claims:

Your petitioner, S. Endicott Peabody, a citizen of the State of Massachusetts, brings this his petition against The United States, as defendant herein, and thereupon shows unto the court the following, to wit:

One.

On February 23rd, 1824, Jose Rafael Samora, a citizen and resident of the district of Ojo Caliente, on behalf of himself and of twenty-five other persons, citizens of the Republic of Mexico and residents of said district, in the Territory of New Mexico, presented

his petition for a grant to them of the tract of land hereinafter described and called and known as the Vallecito de Lovato, through Francisco Trujillo, constitutional alcalde of the district of Santo Tomas of Abiquiu and San Andres, to Bartolomé Baca, then the governor and political chief under the Repeblic of Mexico of the said Territory of New Mexico, and on February 27th, 1824, the said governor granted the prayer of said petition and made the grant of land therein asked for and directed the said Franci-co Trujillo, alcalde, to place the said grantees in possession of said land, and on September 22nd, 1824, the said Francisco Trujillo, alcalde, as aforesaid, placed the said grantees in juridical possession of the
8 same and duly executed his certificate thereof, which was presented to and approved by the said governor and political chief, and the same was delivered to the grantee Jose Rafael Samora for himself and his said associates.

II.

Upon the making of said grant Jose Rafael Samora and his associates, the said petitioner and grantee, received possession of said tract of land, and they and their respective heirs, grantees, and legal representatives have ever since been and now are in the actual, open, and exclusive possession of the said land as the owners thereof under and by virtue of the said grant, and your petitioner is the successor in interest of said original grantee, Jose Rafael Samora, and is the owner of said tract of land under and by virtue of mesne conveyances thereof to him from said original grantee, and there are no persons or person in possession of or claiming the said land or any part thereof otherwise than by the lease or permission of your petitioner.

III.

The said tract of land is called and known as the Vallecito de Lovato, situated in the present county of Rio Arriba, in the Territory of New Mexico, and bounded on the north by the source of the Ojo Caliente river, on the east by the table-land of the Jara, on the south by the point of said river known as the Little ford, and on the west by the mountain ridge known as the Horse Valley ridge, and the same was surveyed by authority of the Government of the United States and was thereby found to contain an area of about 114,400 acres, and your petitioner files herewith, in duplicate, a map showing the same, as near as may be, as claimed by your petitioner.

9 IV.

Said original petition, grant, and act of possession are respectively on file in the archives of the office of the surveyor general of New Mexico, who, your petitioner prays, may be required to produce the same upon the hearing thereof before this honorable court, and your petitioner files herewith, in duplicate, copies of the same and trans lations thereof respectively.

V.

The said grant was heretofore submitted to the United States surveyor general for the Territory of New Mexico, under the eighth section of the act of Congress approved July 22nd, 1854, establishing said office, and said surveyor general, on October 13th, 1875, made his decision and report approving the said grant, and recommended that the same be confirmed, and transmitted the said report and recommendation to Congress for its final action, but no action has ever been taken by Congress in regard thereto, and the said claim has never been submitted to any authorities of the United States constituted by law for the adjustment of land titles within the limits of the said Territory otherwise than as before stated; but on May 12th, 1886, the then surveyor general of New Mexico made a report thereon, termed a supplementary opinion, unfavorable to said grant and transmitted the same to Congress, but no action has ever been taken by Congress or any authority constituted by law for the adjustment of land titles within the limits of the said Territory otherwise than as before stated; and your petitioner states that the said so-called supplementary opinion of said surveyor general rendered on May 12th, 1886, was and is wholly unauthorized and invalid.

VI.

Your petitioner prays that the validity of the said claim
10 may be inquired into and decided by this honorable court and the said title be confirmed to the legal representatives of the said original grantees, Jose Rafael Samora and his associates, or the survivor or survivors of them respectively, in accordance with law.

WARREN, FERGUSSON & BRUNER,
Attorneys of Petitioner.

11 And be it further remembered that, to wit, on said 3rd day of March, A. D. 1893, there was filed in the office of the clerk of said court, at Santa Fé, in the Territory of New Mexico, a petition; which said petition is in the words and figures following, to wit:

12 UNITED STATES OF AMERICA:

In the Court of Private Land Claims, Sitting in the City of Santa Fé, New Mexico.

ANTONIO TRUJILLO and JOSE SALAZAR Y ORTIZ, Plaintiffs,
vs.
THE UNITED STATES, Def'd't.

To the Honorable Joseph R. Reed, chief justice, and to the associate justices of said court:

Antonio Trujillo and Jose Salazar y Ortiz, citizens of the United States of America and residents of the county of Rio Arriba, in the Territory of New Mexico, plaintiffs, bring this their petition against

The United States of America, defendant, and thereupon represent and show unto this honorable court as follows:

That on February 23, 1824, Jose Rafael Samora, for himself and twenty-five others, made petition for a tract of land situate in the Territory of New Mexico, at a place called the "Vallecito de Lovato," with the following boundaries, to wit: On the east the mesa of Zorita, on the west the cuchilla called Valle de los Caballos, on the north the source of the Ojo Caliente river, and on the south the Badito where the grant joins Juan Galbis.

That on the 27th day of February, 1824, by virtue of a decree of Bartolomé Baca, political chief of said Territory of New Mexico, Francisco Trujillo, constitutional alcalde of the district of Santo Tomas of Abiquiu and San Andres, placed the said Jose Rafael Samora and his copetitioners in juridical possession of the said land, with the formalities prescribed by law and with the boundaries as set forth in the said petition.

That the original papers and documents relating to this grant of land aforesaid are now on file in the office of the surveyor general of the Territory of New Mexico, known in that office as re-
13 ported private land claim No. 108, town of Vallecito. Said papers and documents are not in the control of the plaintiffs herein, so that *he* can file them herewith. A copy of the said original documents, which are in the Spanish language, in duplicate, together with a translation of the same, also in duplicate, is herewith filed and marked "Exhibit A" and made a part of this petition.

On the 13th day of October, 1875, the surveyor general of New Mexico recommended the said grant for confirmation by Congress of the United States, and his opinion and the proper papers as required by law were transmitted through the proper channels for the action of the Congress of the United States on said date. No further action has been had with regard to said grant by any authority constituted by law for the adjustment of land titles in the Territory of New Mexico. A preliminary survey of said tract was made by the General Land Office, and a plat of said survey, showing an area of 30,000 acres, is now in the office of the surveyor general. A copy of said plat of survey is herewith filed, marked "Exhibit B;" that so far as he is informed, believes that the said preliminary survey is substantially correct and in accordance with the boundaries of said grant as set forth in said act of juridical possession; that for further evidence of title your petitioners refer to the record of the proceedings had in certain contiguous grants made by the proper authorities of Mexico subsequent to the granting of the said Town of Vallecito tract, and particularly refer to the Petaca grant, which was granted to Jose Julian Martinez and his copetitioners on the 25th day of February, 1836, wherein the Town of Vallecito grant is designated as being the western boundary of the said Petaca grant.

Your petitioner is the owner in fee in and to an interest in the said tract of land by purchase from the heirs and assigns of Jose Rafael

Samora, Benito Sanchez, and Francisco Trujillo, three of the
14 original grantees in said tract; that there are other persons, heirs, assigns, and legal representatives of the said original grantees living on the said tract, holding and claiming interests in and to the same in the same manner as your petitioner; but there is no conflict or question of title of any kind between them and your petitioner.

That the lands embraced within the limits of said grant contain no known mines or minerals of gold, silver, or quicksilver.

That there are no persons in possession of or claiming said grant of land or any part thereof otherwise than in harmony with your petitioner.

Your petitioner therefore prays that this his petition be considered by this honorable court and the validity of said grant, so made as aforesaid, be enquired into and decided, and that the said tract and grant of land, with the boundaries, as set forth in the original documents of said grant, be confirmed unto the petitioner, the legal representatives of the original grantees, forever and for such other and general relief as to this honorable court may seem meet and proper and as the nature of the case may require.

CHAS. A. SPIESS,
Att'y for the Plaintiff.

15 And be it further remembered that, to wit, on the 24th day of March, A. D. 1893, a summons was issued by the clerk of said court; which said summons, with all endorsements thereon, is as follows, to wit:

Form No. 167.
U. S. court of private land claims.

16 *Summons.*

In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA, *District of New Mexico,* } *ss:*

MEREJILDO MARTINEZ ET AL., Plaintiff-, *versus* THE UNITED STATES OF AMERICA, Defendant. } Petition Filed in the Clerk's Office this 28th day of February, A. D. 1898.

The President of the United States of America to Matt. G. Reynolds, Esq., attorney for the U. S. before the court of private land claims, Greeting:

You and each of you are hereby notified that an action has been brought in said court by Merejildo Martinez *et al.*, plaintiff- against you as defendant under the provisions of the act of the Congress of the United States entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims

in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff- is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days from the date of service of this summons upon you, and if you fail so to do the said plaintiff- will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at [SEAL.] the city of Santa Fé, in said district, this 24th day of March, A. D. 1893, and of the Independence of the United States the — year.

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES,
Deputy Clerk.

17 [Endorsed:] Gen. No., 142. U. S. court of private land claims, district of New Mexico. Merejildo Martinez, plaintiff, *versus* The United Strtes of America, defendant. Summons. Filed this 21st day of April, A. D. 1893. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. Geo. Hill Howard, Jeffries and Earle, of Santa Fé, attorney- for plaintiff.

Proof of Service.

UNITED STATES OF AMERICA, } ss:
District of New Mexico, }

APRIL 1ST, A. D. 1893.

I hereby certify that I received the within writ on the 1st day of April, A. D. 189–, and that I have personally served the same upon the said defendant, U. S., by delivering to—

Served on me this the 1 day of April, 1893.

MATT. G. REYNOLDS,
U. S. Attorney.

This writ therefore returned April 1st, as the law directs, *this — day of* ——, A. D. 1893.

TRINIDAD ROMERO, *Marshal*,
By SERAPIO ROMERO,
Deputy Marshal.

Marshal's Fees.

1 summons	4.00
Total	$4.00

18 And be it further remembered that, to wit, on the 25th day of March, —. D. 1893, a summons was issued by the clerk of said court; which said -mmons, with all endorsements thereon, is as follows, to wit:

Form No. 167.
U. S. court of private land claims.

19 *Summons.*

In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA, *District of New Mexico,* } ss:

S. ENDICOTT PEABODY, Plaintiff, *versus* THE UNITED STATES OF AMERICA, Defendant. } Petition Filed in the Clerk's Office this 2d Day of March, A. D. 1893.

The President of the United States of America to Matt. G. Reynolds, Esq., attorney for the U. S. before the court of private land claims, Greeting:

You and each of you are hereby notified that an action has been brought in said court by S. Endicott Peabody, plaintiff, against you as defendant under the provisions of the act of the Congress of the United States entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days from the date of service of this summons upon you, and if you fail so to do the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at [SEAL.] the city of Santa Fé, in said district, this 25th day of March, A. D. 1893, and of the Independence of the United States the — year.

JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES,
Deputy Clerk.

20 [Endorsed:] Gen. No., 204. U. S. court of private land claims, district of New Mexico. S. Endicott Peabody, plaintiff, *versus* The United States of America, defendant. Summons. Filed this 21st day of April, A. D. 1893. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. Warren, Fergusson and Brunner, of Albuq., attorney- for plaintiff.

Proof of Service.

UNITED STATES OF AMERICA, *District of New Mexico,* } ss:

SANTA FÉ, *April 1st, A. D.* 1893.

I hereby certify that I received the within writ on the 1st day of

April, A. D. 1893, and that I have personally served the same upon the said defendant, U. S., by delivering to—
Served on me this the 3d day of April, 1893.

MATT. G. REYNOLDS,
U. S. Attorney.

This writ therefore returned by me, as the law directs, this 21st day of April, A. D. 1893.

TRINIDAD ROMERO, *Marshal,*
By SERAPIO ROMERO,
Deputy Marshal.

Marshal's Fees.

1 summons	4.00
Total	$4.00

21 And be it further remembered that, to wit, on the 27th day of March, A. D. 1893, a summons was issued by the clerk of said court; which said summons, with all endorsements thereon, is as follows, to wit:

Form No. 167.
U. S. court of private land claims.

22 *Summons.*

In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA, *District of New Mexico,* } *ss:*

JOSÉ SALAZAR Y ORTIZ ET AL., Plaintiff-, *versus* THE UNITED STATES, Defendant. } Petition Filed in the Clerk's Office this 3d day of March, A. D. 1893.

The President of the United States of America to Matt. G. Reynolds, Esq., attorney for the United States before the court of private land claims, Greeting:

You and each of you are hereby notified that an action has been brought in said court by José Salazar y Ortiz *et al.*, plaintiff-, against you as defendant under the provisions of the act of the Congress of the United States entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff- is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days from the date of service of this summons upon you, and if you fail so to do the said plaintiff- will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at [SEAL.] the city of Santa Fé, in said district, this 27th day of March, A. D. 1893, and of the Independence of the United States the — year.

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES,
Deputy Clerk.

23 [Endorsed:] Gen. No., 236. U. S. court of private land claims, district of New Mexico. José Salazar y Ortiz, plaintiff, *versus* The United States of America, defendant. Summons. Filed this 21st day of April, A. D. 1893. James H. Reeder, clerk, by I. L. Chaves, deputy clerk. Chas. A. Spies, of Santa Fé, attorney for plaintiff.

Proof of Service.

UNITED STATES OF AMERICA, *District of New Mexico*, } *ss*:

SANTA FÉ, 4. 22, A. D. 1893.

I hereby certify that I received the within writ on the 1st day of April, A. D. 189–, and that I have personally served the same upon the — by delivering to—

Served on me this the 10 day of April, 1893.

MATT. G. REYNOLDS,
U. S. Attorney.

This writ therefore returned by me, as the law directs, this 22 day of April, A. D. 1893.

TRINIDAD ROMERO, *Marshal*,
By SERAPIO ROMERO,
Deputy Marshal.

Marshal's Fees.

1 summons	4.00
Total	$4.00

24 Be it further remembered that thereafter, to wit, on the second day of April, A. D. 1897, there was filed in the office of the clerk of said court, at Santa Fé, New Mexico, an amended petition; which petition is in the words and figures following, to wit:

25 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Sitting at Santa Fé, in the Territory of New Mexico.

S. ENDICOTT PEABODY, Petitioner,
vs.
THE UNITED STATES, Defendant.

To the hon. chief justice and associate justices of the said court of private land claims:

Your petitioner, S. Endicott Peabody, a citizen of the State of Massachusetts, brings this his petition against The United States, The United States Land and Colonization Company, Thomas B. Catron, Antonio Trujillo, Jose Salazar y Ortiz, Merejildo Martinez, Andres C. Gallegos, Francisco Jaramillo, Antonio A. Trujillo, Jose Ramon Martinez y Lucero, Beningno C. Hernandez, Jose Pedro Duran, Antonio Maria Ortega, Jose Damian Gallegos, Patrocinio Valdez, Jose Jerman Griego, Juan T. Ortega, Policarpio Martinez, Jose Martin Trujillo, Juan Trujillo, Encarnacion Medina, Baltazar Martinez, Jose Ramon Martinez y Maestas, Lucas Gallegos, Juan L. Jaramillo, Manuel Jaques, Leocadio Giron, J. M. Giron, Juan de Dios Griego, Jose Leon Chacon, Francisco Vargas, Casimiro Chacon, Hermenejildo Trujillo, J. Vicente Martinez, Juan Ygnacio Martinez, Maria Tereza Medina, Ramon Chacon, Antonio A. Gallegos, Margarito Martinez, Maria Ygnacia Martinez, Maria de la Cruz de Herrera de Luna, Juan Luna, as defendant- herein, and thereupon show unto the court the following, to wit:

One.

On February 23rd, 1824, Jose Rafael Samora, a citizen and resident of the district of Ojo Caliente, on behalf of himself and
26 of twenty-five other persons, citizens of the Republic of Mexico and residents of said district, in the Territory of New Mexico, presented his petition for a grant to them of the tract of land hereinafter described and called and known as the Vallecito de Lovato, through Francisco Trujillo, constitutional alcalde of the district of Santo Tomas of Abiquiu and San Andres, to Bartolome Baca, then the governor and political chief under the Republic of Mexico of the said Territory of New Mexico, and on February 27th, 1824, the said governor granted the prayer of said petition and made the grant of land therein asked for and directed the said Francisco Trujillo, alcalde, to place the said grantees in possession of said land, and on September 22nd, 1824, the said Francisco Trujillo, alcalde, as aforesaid, placed the said grantees in juridical possession of the same and duly executed his certificate thereof, which was presented to and approved by the said governor and political chief, and the same was delivered to the grantee Jose Rafael Samora for himself and his associates.

II.

Upon the making of said grant, Jose Rafael Samora and his associates, the said petitioner and grantee, received possession of said tract of land, and they and their respective heirs, grantees, and legal representatives have ever since been and now are in the actual, open, and exclusive possession of the said land as the owners thereof under and by virtue of the said grant, and your petitioner is the successor in interest of said original grantee, Jose Rafael Samora, and is the owner of said tract of land under and by virtue of mesne conveyances thereof to him from said original grantee, and there
27 are no persons or person in possession of or claiming the said land or any part thereof otherwise than by the lease or permission of your petitioner.

Excepting that your petitioner is informed that said defendants, The United States Land and Colonization Company, Thomas B. Catron, Antonio Trujillo, Jose Salazar y Ortiz, Merejildo Martinez, Andres C. Gallegos, Francisco Jaramillo, Antonio A. Trujillo, Jose Ramon Martinez y Lucero, Beningno C. Hernandez, Jose Pedro Duran, Antonio Maria Ortega, Jose Damian Gallegos, Patrocinio Valdez, Jose Jerman Griego, Juan T. Ortega, Policarpio Martinez, Jose Martin Trujillo, Juan Trujillo, Encarnacion Medina, Baltazar Martinez, Jose Ramon Martinez y Maestas, Lucas Gallegos, Juan L. Jaramillo, Manuel Jaques, Leocadio Giron, J. M. Giron, Juan de Dios Griego, Jose Leon Chacon, Francisco Vargas, Casimiro Chacon, Hermenejildo Trujillo, J. Vicente Martinez, Juan Ygnacio Martinez, Maria Tereza Medina, Ramon Chacon, Antonio A. Gallegos, Margarito Martinez, Maria Ygnacia Martinez, Maria de la Cruz de Herrera de Luna, Juan Luna, claim some interest adversely to your petitioners, but that any interest they may have is subordinate to that of your petitioners.

III.

The said tract of land is called and known as the Vallecito de Lovato, situated in the present county of Rio Arriba, in the Territory of New Mexico, and bounded on the north by the source of the Ojo Caliente river, on the east by the table-land of Jara, on the south by the point on said river known as the Little ford, and on the west by the mountain ridge known as Horse Valley ridge, and the same was surveyed by authority of the Government of the United States and was thereby found to contain an area of about 114,400 acres, and your petitioner files herewith in duplicate a map showing the same, as near as may be, as claimed by your petitioner.

28 IV.

Said original petition, grant, and act of possession are respectively on file in the archives of the office of the surveyor general of New Mexico, who your petitioner prays may be required to produce the same upon the hearing thereof before this honorable court, and your petitioner files herewith in duplicate copies of the same and translations thereof respectively.

V.

The said grant was heretofore submitted to the United States surveyor general for the Territory of New Mexico under the eighth section of the act of Congress approved July 22nd, 1854, establishing said office, and said surveyor general, on October 13th, 1875, made his decision and report approving the said grant and recommended that the same be confirmed and transmitted the said report and recommendation to Congress for its final action, but no action has ever been taken by Congress in regard thereto, and the said claim has never been submitted to any authorities of the United States constituted by law for the adjustment of land titles within the limits of the said Territory otherwise than as before stated, but on May 12th, 1886, the then surveyor general of New Mexico made a report thereon, termed a supplementary opinion, unfavorable to said grant, and transmitted the same to Congress, but no action has ever been taken by Congress or any authority constituted by law for the adjustment of land titles within the limits of the said Territory otherwise than as before stated, and your petitioner states that the said so-called supplementary opinnion of said surveyor general rendered on May 12th, 1886, was and is wholly unauthorized and invalid.

29 VI.

Your petitioner prays that the validity of the said claim may be inquired into and decided by this honorable court and the said title be confirmed to the legal representatives of the said original grantees, Jose Rafael Samora and his associates, or the survivor or survivors of them respectively in accordance with law.

VII.

May it please your honor to grant unto your petitioner the writ of subpœna issuing out of and under the seal of your honors' court, command- the said defendants, The United States Land and Colonization Company, Thomas B. Catron, Antonio Trujillo, Jose Salazar y Ortiz, Merejildo Martinez, Andres C. Gallegos, Francisco Jaramillo, Antonio A. Trujillo, Jose Ramon Martinez y Lucero, Beningno C. Hernandez, Jose Pedro Duran, Antonio Maria Ortega, Jose Damian Gallegos, Patrocinio Valdez, Jose Jerman Griego, Juan T. Ortega, Policarpio Martinez, Jose Martin Trujillo, Juan Trujillo, Encarnacion Medina, Baltazar Martinez, Jose Ramon Martinez y Maestas, Lucas Gallegos, Juan L. Jaramillo, Manuel Jaquez, Locadio Giron, Juan de Dios Griego, J. M. Giron, Jose Leon Chacon, Francisco Vargas, Casimiro Chacon, Hermenejildo Trujillo, J. Vicente Martinez, Juan Ygnacio Martinez, Maria Tereza Medina, Ramon Chacon, Antonio A. Gallegos, Margarito Martinez, Maria Ygnacia Martinez, Maria de la Cruz de Herrera de Luna, Juan Luna, by a certain day and under a certain penalty to be and appear before your honors and then and there true and perfect answers make to all and singular the premises, and that your petitioner may

generally have such other and further relief as the nature of his case may require and to your honors may seem meet and just.

And your petitioner will ever pray.

WARREN, FERGUSSON AND BRUNER,
C. H. GILDERSLIEVE,
Attorneys for Petitioner.

30 And be it further remembered that thereafter, to wit, on the 26th day of June, A. D. 1894, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

UNITED STATES OF AMERICA:

In the Court of Private Land Claims, Santa Fé District, August Term, 1894.

S. ENDICOTT PEABODY, Plaintiff,
versus
UNITED STATES, Defendant. } No. 204. Vallecito de Lovato Grant.

Answer.

Comes now the United States, by its attorney, Matt. G. Reynolds, and, for answer to the petition filed in the above-entitled cause, says:

That for aught he knows to the contrary the matters and things in said petition alleged may be true, but, having no knowledge or information sufficient to enable it to form a belief as to whether they are true, and not confessing any of them to be true in the manner and form as the same are in said petition set forth and alleged, it asks that plaintiff be put to his proof of all the allegations therein contained, as provided he shall be by the act of Congress approved March 3rd, 1891, under which this court assumes jurisdiction of this controversy, and that he shall be put to his proof as to his pretended interest in said alleged grant.

Now, having fully answered, it prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition and for such other orders as to the court may seem meet and proper and which it may be authorized — in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,
U. S. Attorney.

30½ And be it further remembered that, to wit, on said 16th day of April, A. D. 1895, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

31 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé District, May Term 1895.

MEREJILDA MARTINEZ ET AL., Plaintiffs,
versus
UNITED STATES, Defendant. } No. 142.

Answer.

Comes now the United States, by its attorney, Matt. G. Reynolds, and for answer to the petition filed in the above-entitled cause says:

That, for aught it knows to the contrary, the matters and things in said petition alleged may be true, but, having no knowledge or information sufficient to enable it to form a belief as to whether they are true, and not confessing any of them to be true in the manner and form as the same are in said petition set forth and alleged, it asks that plaintiffs be put to their proof of all the allegations therein contained, as provided they shall be by the act of Congress approved March 3, 1891, under which this court assumes jurisdiction of this controversy, and that they shall be put to their proof as to their pretended interest in said alleged grant.

Now, having fully answered, it prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,
U. S. Attorney.

32 And be it further remembered that thereafter, to wit, on the 16th day of April, A. D. 1895, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

33 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé District, May Term, 1895.

JOSE SALAZAR Y ORTIZ, Plaintiff,
versus
UNITED STATES, Defendant. } No. 236.

Answer.

Comes now the United States, by its attorney, Matt. G. Reynolds, and for answer to the petition filed in the above-entitled cause says:

That, for aught it knows to the contrary, the matters and things

in said petition alleged may be true, but, having no knowledge or information sufficient to enable it to form a belief as to whether they are true and not confessing any of them to be true in the manner and form as the same are in said petition set forth and alleged, it asks that plaintiffs be put to his proof of all the allegations therein contained, as provided he shall be by the act of Congress approved March 3, 1891, under which this court assumes jurisdiction of this controversy, and that he shall be put to his proof as to his pretended interest in said alleged grant.

Now, having fully answered, it prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,
U. S. Attorney.

34 And be it further remembered that on the 5th day of September, A. D. 1896, the same being a day of the regular August term, 1896, the court made the following order, to wit:

MEREJILDA MARTINEZ ET AL. *vs.* UNITED STATES. } No. 142. Vallecito de Lobato Grant.

S. ENDICOTT PEABODY *vs.* UNITED STATES. } No. 204. Vallecito de Lobato Grant.

JOSE SALAZAR Y ORTIZ *vs.* UNITED STATES. } No. 236. Vallecito de Lobato Grant.

It appearing to the court that the subject-matter in the above-entitled causes is substantially the same, and that said causes should be consolidated and heard together as one cause, it is hereby ordered by the court that the above-named causes —, and the same are hereby, joined and consolidated, and the same shall proceed hereafter as one cause under the title of Merejilda Martinez *et al. vs.* United States, being No. 142 in the docket of this court, and that the plaintiffs in other causes consolidated with said No. 142 shall be considered and treated as if they had been original petitioners under said cause No. 142.

35 And be it further remembered that thereafter, to wit, on the 20th day of May, A. D. 1897, the answer of the U. S. Land and Colonization Co. and Thomas B. Catron was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

36 In the Court of Private Land Claims.

S. ENDICOTT PEABODY
vs.
THE UNITED STATES ET AL. } No. 204. Vallecito.

Answer.

Come now the defendants, The United States Land and Colonization Company and Thomas B. Catron, and for answer to the petition filed in the above-entitled cause by S. Endicott Peabody, petitioner, say:

1. Defendants deny that on February 23rd, 1824, or at any other time, one Jose Rafael Samora, on behalf of himself or of any one else, presented a petition for a grant to said persons or to any persons whatsoever of any tract of land, as alleged and set forth in said petition, or that the same was known as or called the Vallecito de Lobato, and defendants deny that any such petition was ever presented through Francisco Trujillo, constitutional alcalde, as alleged, to Bartolome Baca, then the governor and political chief under the Republic of Mexico, or to any other authority existing under the Republic of Mexico. Defendants deny that Bartolome Baca, governor, as aforesaid, received the said petition or ever assumed to act thereon, and expressly deny that he granted the prayer thereof in any respect or made the grant of lands therein asked for, or that he directed the said alcalde to place said grantees or any one else in possession of the land described, and defendants aver that no such action was ever taken by the said governor, nor did he ever undertake to make any such grant or order based on any such petition; and defendants furthermore allege that had he taken such proceedings as alleged in the said petition, the same would have been unauthorized by law, illegal, improper, and entirely void, inasmuch as no power existed in the said governor to make such grants; and defendants further deny that the said Francisco Trujillo, alcalde, or any other authority or official, placed the said grantees in juridical possession of the same, and they aver that if he did so the same was unauthorized, illegal, and void, not being in compliance with
37 the laws in existence at such time governing the concession and disposal of said lands. Defendants deny that said alcalde executed any certificate whatever in relation to the premises, or that the same was presented to or approved by the said governor and political chief, or that the same was delivered to the said Jose Rafael Samora, as alleged, and they aver that if any such certificate was executed or any such approval undertaken to be given the same was unauthorized and in violation of law, illegal, and irregular and absolutely void, and defendants, denying the allegations of the said paragraph one, call upon the petitioner for strict proof as to the same.

2. Defendants deny that the said Samora or his associates ever received possession of the said tract of land, legally or otherwise,

and deny that they or their heirs, grantees, or legal representatives have ever since been and are now in the actual, open, or exclusive possession of the said land as the owners thereof under or by virtue of said grant or by any legal authority, and deny that petitioner is the successor in interest of said original grantee, Jose Rafael Samora, or that he is the owner in any sense of the said tract of land under or by virtue of conveyances, as alleged; and defendants deny that there are no persons in possession of or claiming said land otherwise than by petitioner's lease or permission, and aver, on the contrary, that a large portion of the land claimed to be embraced in the said grant is occupied, possessed, held, and owned notoriously and adversely by these defendants.

38 And defendants assert that it is true that the defendant The United States Land & Colonization Company and said Thomas B. Catron claim an interest in a portion of the lands claimed in said grant hostile to said parties, and state that the said United States Land and Colonization Company so claims by virtue of being the owner of the title in and to that certain property known as the Tierra Amarilla grant, and said defendant, Thomas B. Catron, so claims by virtue of a lease or license under the said United States Land and Colonization Company in and to the said lands and as the president and manager of the said company; that the claim of right and title so made embraces all of that portion of the said land which conflicts with the said Tierra Amarilla grant belonging at present to said The United States Land and Colonization Company and occupied as lessee and licensee by said Thomas B. Catron; that the said Tierra Amarilla grant was granted in the year 1832 by the Mexican authorities; was afterwards confirmed on investigation by the surveyor general of the Territory of New Mexico, and recommended for confirmation to the Congress of the United States, and was thereafter confirmed by the Congress of the United States as private land claim number three by act of Congress dated June 21st, 1860, and that the said grant was afterwards lawfully surveyed and a patent thereto of the Government of the United States issued for the same to Francisco Martinez, his heirs and assigns, from which said Francisco Martinez the said defendant, The United States Land and Colonization Company, deraigns title by divers and sundry mesne conveyances, and the said Thomas B. Catron by virtue of the lease or license made to him by the said company also claims his interest, reference being hereby made to the said act of Congress, the said original grant papers now on file in the office of the surveyor general of New Mexico, and to the said patent so issued to the said lands; and defendants aver that by virtue of the facts hereinbefore recited their title to the lands within the said Tierra Amarilla grant is complete and perfect, and that the claim of said petitioner, so far as it conflicts therewith, is void and inoperative.

3. Defendants deny that the said tract is known as or called the Vallecito de Lovato, or that the same is recognized as a tract or grant in any sense, or bears any designation whatsoever, and deny that it is located or bounded as stated in the said petition, or that

it contains any such area as set forth in the said petition. Defendants deny that the same was ever surveyed by authority of the Government or otherwise, or that the said pretended survey is a proper or correct representation of the same.

4. Defendants deny that there ever existed any original petition so called or any grant thereon or any act of possession as stated in said petition, or that the same are on file in the office of the surveyor general of New Mexico; and defendants aver that the copies thereof and the pretended originals referred to in the said petition are grossly defective and insufficient to sustain the allegations in respect thereto.

5. And defendants are not informed as to the various allegations of paragraph five of said petition that the said grant has been investigated and approved by the surveyor general of the Territory of New Mexico, or that his reports thereon, if any were ever made, were transmitted, as alleged; but suggests to the court that such allegations are immaterial and irrelevant to the petition herein, and defendants thereupon deny the truth of such allegations and call for strict proof of the same if deemed relevant. Defendants admit, as alleged in said petition, that on May 12th, 1886, the surveyor general of New Mexico transmitted his supplementary opinion to Congress unfavorably to the said grant claim, and insist that the same was entirely authorized and valid.

Wherefore, having answered the said petition, defendants pray to be hence dismissed.

T. B. CATRON,
Attorney for Def'ts.

39 Be it further remembered that thereafter, to wit, on the 22d day of May, A. D. 1897, there was filed in the office of the clerk of said court, at Santa Fé, New Mexico, the answer of T. B. Catron and the U. S. Colonization Co.; which said answer is in the words and figures following, to wit:

40 In the U. S. Court of Private Land Claims.

MEREJILDO MARTINES ET AL.
vs.
UNITED STATES OF AMERICA and T. B. CATRON, Def'ts.

Now comes Thomas B. Catron, a defendant in the above-entitled cause, and also comes the United States Land and Colonization Company, appearing herein and by virtue of its hostile interest hereinafter shown, requesting that it be considered a party defendant to the petition in said cause, and for answer to the said petition these said defendants say:

They deny that petitioners are the heirs-at-law or legal representatives of Jose Rafael Zamora or any associates of his or that as such petitioners assert any ownership in fee or otherwise to the lands and premises described in said petition. Defendants deny that such premises are called the town of Vallecito or Vallecito de

Lobato, or that they bear any distinguishing designation whatsoever, and deny that any such tract contains the acreage expressed in said petition, or that it is located and bounded as therein alleged; and as to the allegations of said petition these defendants insist upon strict proof.

2. Defendants deny that on February 23, 1824, Jose Rafael Zamora or any other residents of the district of Ojo Caliente or any one else submitted to Francisco Trujillo, constitutional alcalde, or to any other authority constituted by law, any petition for any grant of said lands or for any purpose whatever, or that the said petition contained the recitals or language alleged, and defendants deny that the said Exhibit A is a copy of any such petition.

3. Defendants deny that said alcalde certified or transmitted in any way to the political chief or other legal authority of the province at Santa Fé any approval of said petition, and assert that if he did so the same is irrelevant and immaterial to the issues in this case; and, further, deny that the governor, Bartolome Baca, political chief, as alleged, issued any decree based thereon or issued any decree whatsoever in the premises, either granting said lands to the petitioners or to any one else or making any order whatever in reference thereto or directing said Trujillo or any one else to
41 place them in juridical possession of the same, and defendants deny that the said Exhibit B is a true representation of any such proceeding; but defendants aver that if the said governor did make any such order or undertake to receive any such petition and recommendation, or did attempt to make any grant or concession of lands thereon, or that if any such proceedings were had or taken whatsoever, the same were entirely void, illegal, and unauthorized by law and without any legal authority, and that the same were entirely inoperative; and defendants further insist that if said Exhibit B be a correct representation of the said proceeding the same is entirely insufficient to sustain the allegations of said petition in that respect; and, denying said allegations, defendants call for strict proof thereof.

4. Defendants deny that on September 22, 1824, or at any other time said Trujillo, acting upon said decree or upon any legal authority whatsoever, delivered to any persons as alleged any possession of said premises or assigned the same in any manner, but they aver that if he did the same such proceeding was unauthorized, unfounded in law, and utterly void and inoperative, no legal authority existing to justify or validate the same, and no express decree, either of legal force or not of legal force, directing such proceeding, and defendants deny that Exhibit C is a copy of any certificate of such facts.

5. Defendants deny that by operation of the aforesaid allegations said grantees became vested with any title to the said lands, or that the same was ever complete or perfect, and they deny that by virtue thereof any grant or possession was severed from the doman of Mexico, or that thereby any lands were precluded from passing to the United States of America by the cession under the treaty of Guadalupe Hidalgo, and deny that the same ever were or continued

to be the property of the said grantees, their heirs, assigns, or legal representatives.

6. Defendants deny the allegations of said paragraph 6 as to the investigation of the said matter by the surveyor general of New Mexico, and assert the same is irrelevant and immaterial.

42 Defendants are, however, advised and state as a fact that upon reconsideration and investigation of said alleged grant by the surveyor general of New Mexico the same was found by him to be invalid, and unfavorably reported to the Congress of the United States on, to wit, the — day of ——, 18—.

43 And defendants assert that it is true that the defendant-The United States Land & Colonization Company and said Thomas B. Catron claim an interest in a portion of the lands claimed in said grant hostile to said parties, and state that the said United States Land and Colonization Company so claims by virtue of being the owner of the title in and to that certain property known as the Tierra Amirilla grant, and said defendant, Thomas B. Catron, so claims by virtue of a lease or license under the said United States Land and Colonization Company in and to the said lands and as the president and manager of the said company; that the claim of right and title so made embraces all of that portion of the said land which conflicts with the said Tierra Amarilla grant, belonging at present to said The United States Land and Colonization Company and occupied as lessee and licensee by said Thomas B. Catron; that the said Tierra Amarilla grant was granted in the year 1832 by the Mexican authorities; was afterwards confirmed on investigation by the surveyor general of the Territory of New Mexico and recommended for confirmation to the Congress of the United States, and was thereafter confirmed by the Congress of the United States, as private land claim number three, by act of Congress dated June 21st, 1860, and that the said grant was afterwards lawfully surveyed and a patent thereto of the Government of the United States issued for the same to Francisco Martinez, his heirs and assigns, from which said Francisco Martinez the said defendant, The United States Land and Colonization Company, deraigns title by divers and sundry mesne conveyances, and the said Thomas B. Catron, by virtue of the lease or license made to him by the said company, also claims his interest, reference being hereby made to the said act of Congress, the said original grant papers now on file in the office of the surveyor general of New Mexico, and to the said patent so issued to the said lands; and defendants aver that by virtue of the facts hereinbefore recited their title to the lands within the said Tierra Amarilla grant is complete and perfect, and that the claim of said petitioner, so far as it conflicts therewith, is void and inoperative.

And defendants further deny that the said Vallecito grant, so called in the said petition, is a perfect grant, or that it is any grant or title to lands whatsoever, or that it is senior to the said Tierra Amarilla grant, or that it or any pretended right or title under it affect- in any way the right and title of these defendants to all the lands embraced within the said Tierra Amarilla grant.

8. Defendants are not advised as to whether there are adverse

holders or possessers of lands hostile to the said Vallecito grant beside their own claim, as hereinbefore set forth.

And now, having fully answered the material allegations of the said petition, defendants pray to be hence dismissed.

THOMAS B. CATRON,
Per se and Attorney for Defendants.

44 Be it further remembered that thereafter, to wit, on the 15th day of September, A. D. 1897, there was filed in the office of the clerk of said court, at Santa Fé, New Mexico, a motion for continuance; which said motion is in the words and figures following, to wit:

45 In the Court of Private Land Claims, Sitting within and for the Territory of New Mexico.

S. ENDICOTT PEABODY
vs.
THE UNITED STATES. } No. 204.

Now comes R. W. D. Bryan, on behalf of the petitioner in the above-entitled cause, and asks the court to be made a party plaintiff in said cause, and moves the court that the hearing of the said cause be continued until the next regular or special term of this court, and for grounds of this motion shows unto the court the following reasons, namely:

1. The legal title of and to the said tract of land, being the grant made to Jose Rafael Zamore on February 27th, 1824, and numbered in the office of the surveyor general of New Mexico as number 108, approved by said surveyor general October 13, 1875, and containing, by the official survey, one hundred fourteen thousand four hundred and $\frac{54}{100}$ acres of land, was conveyed by John O. A. Carper and wife by deed dated August 23, 1889, to S. Endicott Peabody, the petitioner herein, and the same was and is held by the said petitioner as trustee and in trust for the use and benefit of a certain corporation organized and existing under the laws of the Territory of New Mexico, called and known as the Rio Grande Irrigation & Colonization Company, and the said petitioner has no personal title or interest in and to said tract of land; and this movant shows unto the court that on, to wit, September 11th, 1897, in a certain cause pending in the district court for the second judicial district and sitting within and for the county of Bernalillo and Territory of New Mexico, wherein Charles H. Gildersleeve is plaintiff and The Rio Grande Irrigation & Colonization Company, S. Endicott Peabody, and The American Loan & Trust Company are defendants, this movant, R. W. D. Bryan, was by said court duly appointed the receiver of all and singular the rights, franchises, books, papers, and property of every name and nature of the said defendant, The Rio Grande Irrigation & Colonization Company, and also of all and singular the lands, tenements,
46 and hereditaments mentioned and described in the bill of complaint in said cause, including the said grant and tract

of land known as the Vallecito de Lovato grant, the same being the same grant and tract of land for the confirmation whereof this petition was filed in this cause by the said petitioner, S. Endicott Peabody, and the said defendant, The Rio Grande Irrigation & Colonization Company, being the same corporation and company for the use and benefit whereof the said petitioner, S. Endicott Peabody, was and is trustee, as aforesaid; and the said movant further shows unto the said court wherein this movant was appointed receiver an injunction was issued against the defendants The Rio Grande Irrigation & Colonization Company and S. Endicott Peabody, trustee, restraining them and each and every one of their agents, officers, and servants during the pendency of the said action from in any way interfering with the possession and control of the property named in said bill of complaint or interfering in any manner to prevent the discharge of the duties of the said R. W. D. Bryan as the said receiver; a certified copy of the said order of the court is filed herein and marked Exhibit "A;" this movant further shows to the court that thereafter, on the 13th day of September, 1897, he, the said R. W. D. Bryan, was duly qualified as such receiver by filing the bond provided for in the said order and decree and by taking an oath for the faithful performance of his duties; and the movant files herewith a certified copy of the record of said court, duly entered on the 13th day of September, 1897, thereupon, which is attached thereto and marked Exhibit "B."

2. This movant respectfully states that since his appointment as receiver, as aforesaid, he has not had time or opportunity to prepare for the trial and hearing of this cause in this court, and has employed no attorney for that purpose, and he is advised and believes that the said petitioner, S. Endicott Peabody, has not procured the attendance of necessary witnesses or otherwise made preparation for the hearing and trial of this cause at this time, and that the substantial interests of the persons beneficially and really
47 interested in the said grant and *and* tract of land will be greatly jeopardized and injured if the same shall be heard and tried on September 15th present, the date on which this movant is informed the said case is set for trial upon the docket of this court, and that if the hearing of said cause be continued this movant can and will procure the attendance of witnesses and produce testimony for the purpose of proving the title and possession of the original grantees of said tract of land and the predecessors in interest of said petitioner, S. Endicott Peabody, and that unless opportunity is afforded for so doing great loss and injury will result to the said parties in interest, and this movant is informed and believes and so states that the said real parties in interest herein have heretofore relied upon the said trustee, S. Endicott Peabody, to prepare for the said hearing of this cause, and for that reason have not made preparation therefor as they otherwise could and would have done.

(Signed) R. W. D. BRYAN.

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

Before me, a notary public in and for said county and Territory, personally appeared R. W. D. Bryan, who, being duly sworn, says that he is the R. W. D. Bryan named in the above motion to which he has subscribed his name, and that the statements therein are true, except as to those matters therein stated to be upon information and belief, and as to those matters be believes them to be true.

(Signed) R. W. D. BRYAN.

Subscribed and sworn to before me this 14th day of September, 1897.

[SEAL.] (Signed) A. B. McMILLEN,
Notary Public.

48 In the District Court for the Second Judicial District of the Territory of New Mexico, Sitting within and for the County of Bernalillo.

CHARLES H. GILDERSLEEVE, Plaintiff,
vs.
THE RIO GRANDE IRRIGATION & COLONIZATION COMPANY, S. Endicott Peabody, Trustee, and The American Loan & Trust Company, Defendants.

Now, on this the 11th day of September, A. D. 1897, comes the complainant, by his attorn*ies*, Warren, Fergusson & Gillette, and thereupon, upon reading the complaint filed in this cause and the exhibits accompanying the same filed on behalf of the plaintiff—

It is ordered, adjudged, and decreed that R. W. D. Bryan be, and he hereby is, appointed receiver of all and singular the rights, franchises, books, papers, and property of every name and nature of the said defendant, The Rio Grande Irrigation & Colonization Company, and also of all and singular the lands, tenements, and hereditaments mentioned and described in said bill of complaint as being the Vellecito grant, situate in the county of Rio Arriba, in the Territory of New Mexico, and described as follows, to wit: "All that certain tract of land in the county of Rio Arriba, in the Territory of New Mexico, known as the Vellecito de Lovato grant, being the grant made to Jose Rafael Zamora on the twenty-seventh day of February, 1824, and numbered in the office of the surveyor general of New Mexico as number one hundred and eight (108), approved by said surveyor general October 13, 1875, and containing by the official survey one hundred and fourteen thousand four hundred and $\frac{54}{100}$ acres of land, being the same premises conveyed to the said Peabody by deed of John O. A. Carper and May Carper, his wife, dated August 23, 1889, and recorded in the office of the clerk and recorder of said Rio Arriba county, in Book Number Ten of the Records of Deeds of Rio Arriba County, *and* pages 276 and 277."

And also all the following-described tract of land in the county

of Socorro and Territory of New Mexico, to wit: "Commenc-
49 ing at the northwest corner township three (3) south, range two (2) east, thence running due east along the north boundary of said township a distance of six miles to the northeast corner of said township; thence south two miles along the east boundary of said township line; thence due east six miles; thence due north two miles; thence due east twelve miles; thence due south fourteen miles three chains and sixteen links to its intersection with the southern boundary of the Socorro grant; thence due west along said southern boundary of said Socorro grant nineteen and one-half miles; thence due north one mile along the east boundary of T. J. Peters' lands; thence due west one-half mile; thence due south one-half mile to the northeast corner of the San Pedro Coal & Coke Company land; thence due west one and one-half miles; thence north sixty-three chains sixteen links to its intersection with the north line of township five (5) south, range two (2) east; thence due west one mile; thence due north nine miles; thence due west one mile to the west line of township three (3) south, range two (2) east; thence due north three miles — the point of beginning, containing about two hundred and seven thousand and fifty-nine and $\frac{17}{100}$ acres of land, according to the United States Government survey, be the same more or less, excepting and reserving therefrom the ranch and possession of Guadalupe Miera, to the extent of one hundred and sixty acres of land, and the ranch and possession of Mauricio Miera, to the extent of one hundred and sixty acres of land, and the ranch and possession of Juan J. Baca, to the extent of one hundred and sixty acres of land, and the ranch and possession of Ramon M-ntoya, to the extent of one hundred and sixty acres of land, and the ranches and possessions of Eutemio Montoya, to the extent of about twenty thousand acres of land, said exceptions and reservations not to exceed in all twenty-six thousand six hundred and forty acres of land—

Being the same premises conveyed to said Peabody by deed of Charles H. Gildersleeve and Teresita Gildersleeve, his wife, dated October 25th, 1889, and recorded in the office of the clerk and recorder of Socorro county, in Book 30, page 175—

50 And also contained and described in a declaration of trust made and executed by said defendant, S. Endicott Peabody, as trustee, dated January 1, 1890, to secure the payment of bonds to be issued by the said Rio Grande Irrigation & Colonization Company and certified to by the said defendant, The American Loan & Trust Company.

It is further ordered that said receiver have and exercise all the powers and duties usually and customarily exercised by receivers, with authority to prosecute in all suits now pending, or that may hereafter be brought, for the protection of any of the property and estate hereinbefore described, effectuate and establish the title thereto, and to bring such suits as it may be deemed necessary by said receiver against trespassers and other persons who may be liable for trespasses or wastes committed in and upon any of said lands or premises, and to proceed, by a suit or otherwise, to recover

possession of all the books, papers, corporate seal, or other property belonging or pertaining to the said defendant, The Rio Grande Irrigation & Colonization Company, and to bring the same under the control and protection of this court; that such receiver be, and he is hereby, authorized to borrow such sums of money and issue receiver's certificates therefor as may be deemed necessary under order of court to properly protect said estates and effectuate the titles thereto and to recover possession of any and all property belonging to the said Rio Grande Irrigation & Colonization Company.

It is further ordered that said receiver within the next twenty days file with the clerk of this court a proper bond, with surety or sureties to be approved by said clerk, in the penal sum of ten thousand dollars, conditioned for the faithful discharge of his duties and to account for all the funds coming into his hands according to the order of this court, said bond to be increased if court so orders.

Each and every of the officers, directors, agents, or employees of the said defendant, The Rio Grande Irrigation & Colonization Company, and of the said Samuel Endicott Peabody, trustee, and of the said American Loan & Trust Company, and all other persons
51 or corporations are hereby required and commanded to turn over and deliver to such receiver or his duly constituted representative any and all property, books, accounts, corporate seal, papers, bonds or obligations, and real estate in their hands or in the hands of either of them hereinbefore mentioned and described.

And it is further ordered that the said defendants and each of them and each and every of their agents, officers, and servants and all other persons be, and the same are hereby, restrained and enjoined during the pendency of this action from in any way interfering with the possession or control of said property or selling or disposing of the same or any part thereof, or from taking possession of or in any way interfering with the same or any part thereof, or from in any manner interfering with the possession or management of any part of the property, real or personal, over which said receiver is hereby appointed, or in interfering in any manner to prevent the discharge of his duty or the operation of said property under order of this court.

It is further ordered that said defendants and each of them show cause, on the 8th day of October, A. D. 1897, at the court-house, in the county of Bernalillo, where the above court will be in session, why this order should not be continued in force.

It is further ordered that a copy of the complaint in this cause, together with a copy of this order, be served upon each of the defendants within twenty days from the date hereof.

And it further appearing that the said defendants, Samuel Endicott Peabody, trustee, and The American Loan & Trust Company, are non-residents, it is ordered that the service of a copy of this order and of the said complaint be made upon them and each of them by James J. Myres, of Cambridge, in the Commonwealth of Massachusetts, or by Henry E. Warner, of Cambridge, in the Com-

monwealth of Massachusetts, due service thereof to be evidenced by the affidavit of either of them.

(Signed) N. C. COLLIER,
Associate Justice of the Supreme Court of the Territory of New Mexico and Judge of the Second Judicial District Court Thereof.

52 TERRITORY OF NEW MEXICO, } ss:
County of Bernalillo, }

Second Judicial District Court.

I, O. N. Marron, clerk of the district court of the second judicial district of the Territory of New Mexico within and for the county of Bernalillo, do hereby certify that the above and foregoing is a true, correct, and complete copy of an original order made by the said court and entered of record in the said cause on the 10th day of September, 1897, as the same appears from the records of my said office.

In witness whereof I have hereunto set my hand and affixed the seal of the said court this 10th day of September, 1897.

[SEAL.] (Signed) O. N. MARRON, *Clerk.*

Exhibit "A."

53 TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

In the District Court.

C. H. GILDERSLEEVE
vs.
RIO GRANDE IRRIGATION & COLONIZATION CO. ET AL. } No. 4870.

Comes now R. W. D. Bryan, Esq., heretofore appointed receiver in the above-entitled cause, and here now presents to the court his bond as such receiver; which bond is approved as provided in said decree, and the said R. W. D. Bryan is sworn to the faithful performance of his duties; and thereupon the said R. W. D. Bryan enters upon the discharge of his duties as such receiver.

The above is a copy of a record made in said cause this 13th day of September, 1897.

[SEAL.] (Signed) O. N. MARRON, *Clerk.*

Exhibit "B."

54 And be it further remembered that thereafter, to wit, on the 2nd day of October, A. D. 1897, a motion and affidavit for continuance was filed in the office of the clerk; which said motion and affidavit are in the words and figures following, to wit:

55 In the Court of Private Land Claims, Sitting in the Territory of New Mexico, ss:

S. ENDICOTT PEABODY
vs.
UNITED STATES ET AL.

Now comes the said claimant, by his solicitors, and moves the court to continue this cause for reasons set forth in the accompanying affidavit.

WARREN, FERGUSSON & BRUNER,
Solicitors for Claimant.

TERRITORY OF NEW MEXICO,
County of Santa Fé.

Frank W. Clancy, being sworn, on his oath says that he — of counsel for claimant in the above-entitled cause, having been employed to assist the Hon. Henry L. Warren in the preparation and trial of the same; that in opinion of affiant it will be quite impossible properly to prepare said case for trial during the present session of this court unless such session is protracted for at least two weeks; that at a former day of the present session an order was entered, the effect of which was to carry the case over to the 20th of the present month, and while it now appears that said order was based on a misunderstanding, yet affiant relied upon said order, with the preparation and making of which he had nothing to do and never heard of any suggestion of an earlier trial of the case until yesterday, when he came to Santa Fé to attend a session of the supreme court of New Mexico.

Affiant further states that in the way of specific facts which he desires to prove on the trial of said cause is this: That Jose Rafael Samora, the original petitioner for the grant, after he was put in possession in 1824, lived on the property until some time after the year 1840, when he and others living there were driven away by hostile Indians, and before it was possible for him to return to the grant he died at or near the Ojo Caliente, in Rio Arriba county,
56 about the year 1845; and affiant further states that he is informed said facts can be proved by Rafaela Aguilar, now living in Rio Arriba county, and whose attendance can be procured if said case is delayed, and affiant knows of no other witness by whom such facts can be proved.

Affiant further states that he cannot safely go to trial in said cause until he has had time to make careful examination of and search among the archives in the office of the surveyor general for New Mexico and in the territorial library for the purpose of producing all the record evidence possible as to the nature and character of such grants as the one to be presented herein and as to how they were treated and considered by the grantees and by the judicial and other officers of the former governments in acting upon questions of ownership and boundaries and disputes and litigation relative thereto; that according to affiant's general recollection there are to

be found in said archives a number of records which will show that the owners of such grants themselves considered that their rights and titles extended to the outboundaries named in the grants, although allotments might have been made of the agricultural lands, and that the authorities of the former government recognized such rights and titles to the full extent claimed by such owners and carefully protected the owners from encroachments and trespasses by other persons upon any of the lands included within the outboundaries; that such evidence is important and material in consequence of the decisions of the Supreme Court of the United States in the cases of the Cañon de Chama and San Miguel del Bado grants, in which cases such evidence was not presented, and that from the nature of the archives it is impossible to be more specific as to the evidence to be produced.

FRANK W. CLANCY.

Subscribed and sworn to before me this 2nd day of October, 1897.
[SEAL.] JAMES H. REEDER,
Clerk C. P. L. C.,
By IRENEO L. CHAVEZ, *Deputy.*

57 And be it further remembered that thereafter, to wit, on the 8th day of June, A. D. 1897, a replication was filed in the office of the clerk; which said replication is in the words and figures following, to wit:

58 & 59 TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

In United States Court of Private Land Claims.

S. ENDICOTT PEABODY }
vs. } No. 204.
UNITED STATES ET AL. }

The replication of S. Endicott Peabody, complainant, to the answer of The United States Land and Colonization Company and Thomas B. Catron, defendants.

This replicant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says:

That he will aver and *approve* his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the defendants is uncertain, untrue, and insufficient to be replied unto by this replicant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this replicant is and will be ready to aver and *approve* as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

WARREN & FERGUSSON,
Solicitors for Complainant.

60 And be it further remembered that thereafter, to wit, on the 15th day of September, 1897, the same being a day of the regular September term, 1897, holden at Santa Fé, New Mexico, the following, among other, proceedings were had, to wit:

S. ENDICOTT PEABODY *vs.* UNITED STATES. } No. 204. Vallecito de Lobato Grant.

Upon filing the motion of R. W. D. Bryan, receiver of the Rio Grande Irrigation and Colonization Co. and the property involved in question herein, to be made party plaintiff in this cause, the court, being fully advised in the matter, grants the said motion, and the said R. W. D. Bryan, as such receiver, is hereby made party plaintiff herein. Upon the motion of the said R. W. D. Bryan for a continuance of said cause, the court, being fully advised, set the trial of said cause on the 20th day of October, 1897.

61 And be it further remembered that thereafter, to wit, on the 2nd day of October, A. D. 1897, the same being a day of the regular September term, 1897, holden at Santa Fé, New Mexico, the following, among other, proceedings were had, to wit:

MEREJILDA MARTINEZ ET AL. *vs.* UNITED STATES. } No 142.

S. ENDICOTT PEABODY *vs.* UNITED STATES. } No. 204.

JOSE SALAZAR Y ORTIZ *vs.* UNITED STATES. } No. 236.

} Vallecito de Lobato Grant.

The above-entitled cause now coming on to be heard on the motion of plaintiffs for a continuance, there appeared F. W. Clancy, Esq., for the petitioners, and W. H. Pope, Esq., appeared for the defendant; T. W. Catron, Esq., appeared for adverse claimants, and the court, now being sufficiently advised in the premises, overrules said motion, and the cause is set for hearing on Tuesday, the 5th inst.

62 And be it further remembered that thereafter, to wit, on the 5th day of October, 1897, the same being a day of the regular September term, A. D. 1897, holden at Santa Fé, New Mexico, the following, among other, proceedings were had, to wit:

MEREJILDA MARTINEZ ET AL. *vs.* UNITED STATES.	No. 142.	Vallecito de Lobato Grant.
S. ENDICOTT PEABODY *vs.* UNITED STATES.	No. 204.	
JOSE SALAZAR Y ORTIZ *vs.* UNITED STATES.	No. 236.	

The above-entitled consolidated causes now coming on to be heard, there appeared George Hill Howard for the petitioners in cause number 142, F. W. Clancy, Esq., appeared for the petitioners in case No. 204, and T. B. Catron, Esq., appeared for the adverse claimants. The parties announcing themselves ready, the trial of the causes was proceeded with. Oral and documentary proof was introduced, and, after hearing the argument of the counsel, the court took the causes under advisement.

63 On the trial of said cause- the following testimony, oral and documentary, was offered and introduced:

64 In the Court of Private Land Claims, Santa Fé, New Mexico, September Term, 1897.

MEREJOLDA MARTINEZ ET AL. *vs.* UNITED STATES.	No. 142.	Vallecito de Lobato Grant.
S. ENDICOTT PEABODY *vs.* UNITED STATES.	No. 204.	Vallecito de Lovato Grant.
JOSE SALAZAR Y ORTIZ *vs.* UNITED STATES.	No. 236.	Vallecito de Lobato Grant.

On October 5th, A. D. 1897, the above-consolidated cases came up for hearing, and the following proceedings were had therein in open court:

Appearances: G. Hill Howard, Esq., for plaintiffs in No. 142; F. W. Clancy, Esq., for plaintiff in No. 204; Messrs. Catron & Gortner, for owners of the Tierra Amarilla grant; W. H. Pope, Esq., for the Government.

Mr. CLANCY: We offer in evidence the petition of Samora, with the endorsement of the alcalde, the order of the governor, and the act of juridical possession (marked Plaintiffs' Exhibit A).

Mr. CATRON: We object to this as improper, incompetent, irrelevant, and impertinent evidence, and as not establishing any valid

or legal grant in accordance with the petition in this case, and as being no evidence whatever of a grant to the extent of the limits specified in the grant, and being no evidence at all of anything; we object to the papers not being genuine, and the signature of the governor on that paper is not genuine; taken subject to the objection.

Mr. POPE: So far as the Government is concerned, we admit that it comes from the surveyor general's office, but do not admit that the act of possession offered comes from the archives.

Mr. CATRON: We object to that paper because it is not
65 signed by the governor and carries no signature of the governor nor that of any one else. We admit that it comes from the archives, but do not admit its genuineness.

Mr. HOWARD: We also offer in evidence a paper which purports to be a list of the persons included in the Vallecito grant, file 184, number 3 (Plaintiffs' Exhibit A).

Mr. CLANCY: I next offer in evidence an abstract of title showing Mr. Peabody's chain of title (Plaintiffs' Exhibit B).

We next offer in evidence the deposition of Pablo Dominguez, who is now deceased (Plaintiffs' Exhibit C).

Mr. CATRON: I want to object to all this testimony, as I was not given any notice of its taking. The depositions were taken when they knew I was a necessary party to the case and no notice given to me of the taking of the deposition- and of the opportunity given to me to cross-examine these witnesses.

COURT: The deposition has been on file for months since the consolidation was made, and there has been no motion to suppress it; that objection cannot be made on the trial; parties should take notice of what was on file in the case; we will not on the trial give the party the advantage to an objection which might have been made by motion before in the case. This objection will be overruled.

Also offer in evidence the testimony of Dionecio De Vargas, taken before the surveyor general in the matter of this claim on the 10th day of May, 1875 (Plaintiffs' Exhibit D).

Mr. HOWARD: We next offer in evidence the testimoney taken on the 26th day of August, 1896, in Santa Fé, before Judge Reed (Plaintiffs' Exhibit E).

We next offer in evidence the plat or sketch map of the final survey that was made (Plaintiffs' Exhibit F).

Mr. CATRON: This testimony is also objected — as being improper, irrelevant, incompetent, and immaterial, and of the two witnesses, and all this other, and I ask that they be suppressed.

66 We next offer in evidence deed from Martin Trujillo to Merejilda Martin (Plaintiffs' Exhibit G), dated April 14, 1852.

Same objections and not properly executed in accordance with the laws of the Territory.

We next offer in evidence deed from Maria Archuleta to Jesus Ruibal, dated April 27, 1830 (Plaintiffs' Exhibit H).

We next offer deed from Juan S. Garcia to Diego A. Maes, dated ——, 1830 (Plaintiffs' Exhibit I).

We next offer deed from Juan Uliberri to Jose Martinez, dated September 25, 1842 (Plaintiffs' Exhibit J).

We next offer deed from Juan Felipe Martinez to Manuel Martin, dated April 2, 1852 (Plaintiffs' Exhibit K).

We next offer deed from Maria S. Barelli to Jose M. Martinez, dated April 5, 1866 (Plaintiffs' Exhibit L).

We next offer in evidence deed from Maria de J. Zamora to Maria S. Varela (Plaintiffs' Exhibit M).

We next offer in evidence deed from Maria de J. Samora to Felipe Trujillo, dated March 9, 1842 (Plaintiffs' Exhibit N).

We next offer in evidence deed from Maria de J. Zamora to Felipe Trujillo, dated January 14, 1842 (Plaintiffs' Exhibit O).

We next offer in evidence deed from Martin Trujillo to Marejildo Martin, dated April 14, 1852 (Plaintiffs' Exhibit P).

Same objections to all these deeds as last above.

Mr. POPE: We offer in evidence the deposition of Antonio de Vargas taken before Judge Sluss September 16, 1897 (Defendant's Exhibit A).

Mr. CATRON: We offer in evidence the patent from the United States to this Tierra Amarilla grant (marked Catron's Exhibit A).

Mr. CLANCY: We object to the introduction of this patent. We admit that Mr. Catron is connected with the Tierra Amarilla grant sufficiently to connect him with this case.

Mr. CLANCY: We offer in evidence the muniments of title of claimants in the Petaca grant, No. 99 (Plaintiffs' Exhibit Q).

67 Mr. HOWARD: We offer in evidence Exhibits "A, B, C" in case 142 (Plaintiffs' Exhibits "A, B, C").

Mr. CATRON: We object to all this testimony as improper, immaterial, and not legal or valid evidence and not calculated to establish any case, and if that is admitted in evidence subject to our objections we ask that the petition for the confirmation of the grant which is appended to these papers from the surveyor general's office be also introduced in evidence; if the other goes in, we ask that the petition go in as evidence, too, and we object to that portion of that document containing the evidence of witnesses who are not shown to be dead; two of these witnesses are not dead.

COURT: That testimony is rejected.

Mr. CATRON: I ask to put in evidence the supplemental report of Surveyor General Julian (Catron's Exhibit B).

Mr. CLANCY: We object to it as irrelevant, incompetent, and made without any authority of law.

FRANK W. CLANCY, sworn on the part of the plaintiffs, testified as follows: Since the recess was taken by the court this morning I made as thorough a search as the time would permit of the archives in the office of the surveyor general, and I have found four papers on which appear the signature of the name of Francisco Trujillo, the same name as that of the alcalde whose name is signed to the act of possession offered in evidence in this case, and I have not been able to find any other additional papers, and I submit these

four papers to Mr. W. M. Tipton as an expert in such matters for examination and comparison as to the signatures.

WILLIAM M. TIPTON, sworn on the part of the plaintiffs, testified, upon direct examination by Mr. Clancy, as follows:

Q. Mr. Tipton, have you examined this paper, which is the one which purports to be an act of juridical possession, offered in evidence in the present case, and have you also examined archives 387 and 1189 from the office of the surveyor general, all three of which I now show you, and can you from that examination
68 make any statement as to the signatures of Francisco Trujillo which appear on all the papers?

A. I have examined the papers in question, and am prepared to make a statement about the signatures attached to them.

Q. What would you say as to whether or not the signatures were written by the same person?

Objection as not being proper, competent, material, or relevant.

A. It is my opinion that the signature of Francisco Trujillo as it appears upon the act of possession in the matter of the case now on trial was written by the same person who wrote the signatures of Francisco Trujillo upon archives 387 and 1189 from the records of the surveyor general's office.

Q. For how long a time have you been familiar with the papers known as archives in the office of the surveyor general?

A. I have been particularly familiar with them for over thirteen years, and had some knowledge of them prior to that time.

Q. From your knowledge and experience in connection with these archives please state whether or not you have known of any doubts that exist upon the genuineness of the papers known as archives in that office.

Objection as impertinent, incompetent, improper, and irrelevant. This question is limited to those papers which are particularly known as archives, and have been in the office of the surveyor general, as appears from its records, from the time it was organized, in 1855.

A. In answering the question I will state that when I refer to archives in the surveyor general's office I understand by that term those papers which at various times have been received by the surveyors general from the territorial archives, which were at one time under the charge of the governors of the Territory and at present in charge of the territorial librarian, and I have no knowledge of any of those documents so described, which are now in the office of the surveyor general, ever having been questioned as to genuineness.

Mr. CLANCY: I will offer in evidence the two archives, 387 and 1189 (Plaintiffs' Exhibit R).

69 Q. Have you examined today any other papers on which there appears a signature of the name Francisco Trujillo from the archives?

A. Yes, sir; I have.

Q. What would you say as to these?

A. As to these two signatures, I believe that neither of them was written by the same person who wrote the signatures of Francisco Trujillo about which I have just testified, and one of them certainly was evidently the signature of a different person—that is, I make that statement upon other matters than upon the mere signature. It appears from the document that it was probably another person.

Q. Do you recollect the dates of these other papers? These others I have not brought up here, not thinking it necessary.

A. I think one of them was ten or eleven years subsequent to 1824. About the others I do not recollect. I paid no attention to it.

Cross-examination by Mr. CATRON:

Q. Mr. Tipton, did you ever see any signature of Francisco Trujillo besides on these two papers—on the one in question in this case—besides the two papers which have just been shown you, on the act of juridical possession in this case?

A. I am not certain as to whether I ever saw another of these signatures. I have seen the signature of a man of the same name, but the handwriting of a different person.

Q. Have you sufficient recollection of any other signature besides these which you have seen so as to be able to identify the signature in this case from them?

A. No.

Q. The only way, then, you undertake to identify this signature is simply by comparison with the two other signatures which have been shown you?

A. That is all.

Q. And you do not pretend to have seen these other two which have been shown you until within the last couple of hours?

A. I do not know that I ever saw them before, although it is likely that I have.

Q. You have no recollection of having seen them to have them impressed upon your mind?

A. No.

70 Q. You have no other means of identifying the signature of Francisco Trujillo on the juridical possession than by these two signatures which you have seen on documents 1189 and 387?

A. No.

Q. I will ask you to look at the body of the act of juridical possession and also another paper called a list which is appended to it, and state, if you can—examine the body, the handwriting in the body of the two papers—and state, if you can, whether or not they have been made by the same—written by the same person. I am not speaking about the signatures. I am speaking about the writ

ing in the body of the two papers—the handwriting in the body of the two papers.

A. In my opinion, the handwriting in the body of the two papers was executed by different persons. The handwriting in the body of the list is not the same handwriting in which the body of the possession is written.

Q. See if you see any writing in either of them that corresponds in the two. Compare the signatures as well as the body, if you wish to. I do not care where you find it; just point out in the writing or where you find it.

A. There is no writing upon the act of possession which I am able to state is the same as that of any writing upon the list that has been handed me; but there is sufficient resemblance between the writing on the list and one of the signatures on the act of possession to lead me to believe that it is not impossible that the list might have been written by one of the persons who signs the act of the possession——

Q. Give his name.

A. Juan Cristoval Quintana; but I am not going to state a positive opinion on that subject until after giving the papers a more careful examination.

Q. Look at archive 898, file 184, and compare it with the list and see if you see any similarity between the writing on the list and the body of that paper which has been offered in evidence by the claimants.

A. I see no similarity between the two papers that indicated that they were written by the same person at all.

Q. I will get you to compare the actual paper on which the writing is contained in the act of juridical possession and that in which the list is written and see whether they are the same kind of papers of not.

71 A. I think they are substantially the same kind of paper.

Q. Look at the paper on which the document marked 898, file 184, is written, and see whether it is the same kind or different paper.

A. That is a different kind of paper from the other.

Q. I will ask you to look at the paper on document marked 898 A, file 184, and see whether it is the same kind of paper as the act of juridical possession and the list are written on.

A. That is a different kind of paper.

Q. Now, I will get you to compare the signature of Francisco Trujillo on that paper with the signature of Francisco Trujillo on the other two papers which have been shown you by Mr. Clancy here, and state whether or not it is written by the same person—these two papers from the archives that have been shown you.

A. Do you want this compared with the two archives?

Q. Yes, sir.

A. I think the signature of Francisco Trujillo on paper 898 A is in the handwriting of a different person from the one who wrote the signatures of Francisco Trujillo on archives 387 and 1189.

Q. How is the signature on that document, marked 898A, as to

being made by the same person who wrote the body of the writing immediately above it—as to being written by the same parties—in your opinion?

A. The signature is in the same handwriting as the four lines immediately above it, in my opinion.

Q. Will you compare that signature with the signature on the act of juridical possession of Francisco Trujillo, and state whether or not, in your opinion, they were made by the same parties.

A. In my opinion, they were made by different parties.

Q. This document marked 898 A, file 184—is that an original archive or not?

A. It is.

Q. And that is an archive in this case, is it not—the Vallecito case?

A. It is a paper in the Vallecito case—the Vallecito grant—as filed in the surveyor general's office.

72 SANTA FÉ, NEW MEXICO, *October 29th*, 1897.

I hereby certify that the above and foregoing eight (8) pages contain a full, true, and correct transcript of all the testimony offered on the trail of the above-entitled case in open court.

W. J. McPHERSON,
Official Stenographer.

[Endorsed:] Nos. 142, 204, and 236. F. 8. Transcript of the trial. Filed in the office of the clerk, court of private land claims, Oct. 29, 1897. Jas. H. Reeder, clerk, by I. L. C., deputy.

73 PLAINTIFFS' EXHIBIT "A."

Muniments of Title.

Sr. Alcalde Constitucional de Abquiu, D. Franco Trujillo:

Jose Rafael Samora, vecino y residente en al partido del Ojo Caliente, con veinte y cinco individuos del mismo partido, ante V. con el mas debido respecto y sumicion que haya lugar en derecho y al nuestro combenga y decimos: Señor que habiendo tierra suficiente en el Vallecito de Lovato para que se nos dé posecion, pedimos ahora al benigno corazon de V. se nos dé, pues no tenemos ni aun siquiera donde tirar unos granos para, á los cuales nos parece no hasemos ningun perjuicio á los demas residentes en dho, partido; por todo lo cual, á v. rendidamente, suplicamos como padre y amante á nuestra patria el consedernos dicha posesion de lo que recibiremos merced y gracia.

Abiquiu, 23 de febrero de 1824.

Por todos los espresados.

JOSE RAFAEL SAMORA.

Certifico ser cierto lo dicho arriba, estar de valdio y no reconocer los que lo pretenden ninguna propiedad.

Abiquiu, 24 de Febrero de 1824.

FRANCO. TRUJILLO.

Las tierras que solicita José Rafael Samora, con los veinti y cinco individuos que le acompañan en su pretencion, en virtud de su informe de Vm., puede proceder á ponerlos en posesion para que no pierdan tiempo en hir travajando ni interseda con las formalidades, necesarias, lo que no puede verificarse ahora por no estar reunida la exama. deputacion que es á quien corresponde.

Dios &a., Febrero 27 de 1824.

Sor. Alce. de Abiquiu.

Encargo á Vm. vea á esos infelices con caridad al ponerlos en posesion, llevandoles por su travajo de Vm. arreglado á su infelicidad mas que al arancel que rige.

Don Francisco Trujillo, alcalde constitucional de este partido de Santo Tomas de Abiquiu y sus anexos: En virtud del decreto del Sor. D. Bartolomé Baca, actual gefe politico de estas prova., dado en Santa Fé á veinte y siete de febrero de mil ochocientos veinte y cuatro, por la instancia que promoviá José Rafael Samora y sus compañeros, solicitando se les adjudicara un terreno valdio, y cito y nombrado el Vallecito de Lovato, en el Rio Arriba del Ojo Caliente, pasé y reconosí el mencionado terreno y vista su amplitud y proporciones, presentes los interesados y mas, que se agregaron segun la lista que manifestaron, y conferenciado entre todos pa. qe. en
74 ningun tiempo hubiera disturbios ni diferencias entre ellos mismos, se los medi á cada uno (borrado) cincuenta varas á unos por la proporcion del terreno á otros de Cien varas, y ciento veinte y cinco al dho. José Rafael Samora, como principal solicitante, en cuya reparticion han quedado muy contentos y satisfechos; quedando libre del badito y cuestecita que llaman para abrevadero comun y el medio del cañoncito hasta los terrenos qu, laman de Juan Benito Sanchez, dejando para cita la plaza ciento cincuenta varas, siendo la comprehencion del referido terreno repartido la mesa de la Sorrita por el Oriente; por el poniente, la cuchilla que llaman del Valle de los Caballos; por el Norte, el nacimiento del mismo rio, y por el Sur, el Badito donde junta la merced de Juan Galbis, no habiendo quien contra diga ni demande in injuria en el terreno repartido, y para que conste de este repartimiento comun á estos vecinos y ciudadanos encargados de que se esmeren en fortificarse pa, sus mismos defensos, cultivar y adelantar el laborio para sus propios comveniencias, formalizando una considerable poblason segun lo previenen las leyes, Advertidos de qu. como nuevos colones deben esmerarse, no teniendo libertad de cambiar, vender, ni enagenar hta. que no adquisieran ó tengan al tiempo bastante para poderlo haser; y si algunos antes de complido el tiempo, por combeniencia particular ó mejoria de terreno, quisiere pasar á poblar á otra parte, que dará endendido de renunciar esta merced para poder ser admitidos en otra merced, debiendo presentar este documento al Sor. gefe politico pa. qu. apruebe, reforme ó determine lo que jusgue por combeniente. Siendo testigo del referido repartimiento el tente. retirado D. Cristoval Quintana y D. José Velasquez,

vecinos y ciudadanos en el partido del Ojo Caliente, entregado esta á el mencionado José Rafael Samora como principal interesado. Abiquiu Sep. veinte y dos de mil ochocientos veinte y cuatro.

FRANCISCO. TRUXILLO.

JUAN JOSÉ ARZA, *Srio, de Cavdo.*

De asisa.: JUAN CRISTOVAL QUINTANA.
De asisa.: JOSÉ VELASQUEZ.

Lista de los individuos que comprenden ha asta merced del Vallecito que comunmente llaman de Lovato, y son como sigeno.

Tomas Chacon, unas sobras.....
Nepomoceno Estrada..... 150
Jua Siriaco Garcia..... 150
Francisco Archuleta..... 150
Manuel Archuleta..... 200
Juan de Dios Trugillo..... 200
75 Juan Cristoval Quintana, de una banda 300
Juan Benito Sanchez..... 200
Juan Samora, de una banda 350
Manuel Samora y José Samora, una banda desde el lindero del dicho Sanchez hasta el cañoncito.....
Jose Martin, desde donde comiensa el cañoncito del lado de arriba hast el lindero de Francisco Valdez el dicho Francisco Valdez sien..... 100
Rafael Valdez..... 100
Juan Felipe Naranjo. 100
Manuel Martin.. 100
Manuel Marguez..... 100
Francisco Gallegos..... 100
Antonio Domingo Garcia..... 100
Jose Manuel Valdez..... 100
Jose Rafael Salas..... 100
Franco Trugio..... 100
José Rafael Samora..... 325
Juan Pedro Samora..... 300
Miguel Samora..... 300

Siento cincuenta de una banda y otra libres para que se haga la Plaza.

Juan de los Reyes Sena..... 100
Francisco Trujillo..... 100
Rafael Valverde..... 100
Pedro Valverde..... 100
Francisco Espinosa..... 100
Grabiel Espinosa..... 100
Jose Antonio Gonzales..... 300
Manuel Silvestre Trujillo 300
Juan Manuel Olguin 300

Martin Vigil 300
Manuel Chaves 300
Manuel de Jesus Salazar 300
Francisco Trujillo 300
Juan de Jesus Chaves 100
Juan Senon Trujillo 300
Miguel Sena 300
Jose Ortiz 100
Juan de Jesus Abila 300
76 Bartolo Chaves 300
Juan de Jesus Martin 300
Manuel de Jesus Trujillo 300
Juan Agustin (borrado) 100
Lionicio Vigil 300
Jose Francisco Serdo 300
Juana Angela Samora 300
Matias Gonzales 300
Vicente (borrado) .....
Juan Senon Trujillo 300

77 PLAINTIFFS' EXHIBIT "A."

Translation of Muniments.

Hon. constitutional alcalde of Abiquiu, Francisco Trujillo:

I, Jose Rafael Samora, citizen and resident in the district of Ojo Caliente, together with twenty-five individuals of the same district, appear before you with the greatest respect and humility and in due form of law, and state, sir, that there being sufficient land in the Vallecito of Lovato to give us in possession we now ask that in the goodness of your heart you grant us the same, for we have not any place wherein to plant grain for harvesting, whereby we think the others, the residents of said district, will receive no injury.

Wherefore we humbly request your honor, as our protector and as a lover of our country, to grant us said possession, whereby we will receive favor and benefit.

Abiquiu, February 23, 1824.

For all those stated.

JOSE RAFAEL SAMORA.

I do hereby certify that the above is true and the land applied for public, and I do not recognize those applying for the same as property-holders.

FRANCISCO TRUJILLO.

The land applied for by Jose Rafael Samora, together with the twenty-five accompanying individuals in his petition, in virtue of your report, you may proceed to place them in possession, in order that they may not lose time in their labor until the necessary formalities can be had, which cannot be verified at this time, the excellent deputation not being in session to whom the matter pertains.

I charge you to treat those unfortunate persons with consideration on placing them in possession, charging for your labor according to their wants and not more than the fee bill allows.

78 God and (liberty).

February 27, 1824.

To the alcalde of Abiquiu.

I, Francisco Trujillo, constitutional alcalde of the district of Santo Tomas of Abiquiu and San Andreas, by virtue of the decree of Bartolome Baca, actual political chief of this province, given at Santa Fé on the twenty-seventh of February, one thousand eight hundred and twenty-four, on the petition presented by Jose Rafael Samora and his associates, requesting there be adjudged to them a tract of public land and called the Vallecito de Lovato, up the river from Ojo Caliente, proceeded, and having examined the said land and seeing its extent and proportions, the parties interested being present and others who joined them according to the list they presented, and all having agreed among themselves that at no time there should be interruptions or differences among them, I measured off to each one (defaced) fifty varas to some, in conformity with the extent of the land; to others one hundred varas, and one hundred and twenty-five varas to the said Jose Rafael Samora, as principle petitioner, with which distribution they remained well contented and satisfied, there remaining free the so-called Badito and cuestecito for a common watering place, and in the center of the cañoncito to the lands called those

79 of Juan Benito Sanchez, having for the site of the plaza one hundred and fifty varas, the limits of said distributed land being, on the east, the mesa of the Zorita; on the west, the cuchilla called del Valle de los Caballos; on the north, the source of the said river, and on the south, the Badito, where the grant joins Juan Galbis, there being no one who contradicted or made any demands as to injury in the distribution of the land; and that this common distribution may appear as made to these residents and citizens I charged them to endeavor to fortify themselves for their own defense; to cultivate and advance agriculture for their own benefit by forming a considerable settlement, as provided by the laws, giving them to understand that as new colonists they shall exert themselves, not being authorized to exchange, sell, or alienate the same until they shall have acquired title or have sufficient time to do so, and should any, before the termination of this time, for their own particular convenience or for increasing their land, wish to go and settle another place they remain notified that they shall renounce this grant in order to be admitted in another, having to present this document to the political chief in order that he may approve, reform, or determine that which he may deem proper.

The witnesses to said distribution being the retired Lieut. Christoval Quintana and Jose Velasquez, residents and citizens of the district of Ojo Caliente, this being delivered to the grantee, Jose Rafael Samora, as the principal party interested.

Anituiu, September twenty-second, one thousand eight hundred and twenty-four.

FRANCISCO TRUJILLO.

JUAN JOSE DE ARZE,
Secretary of the Ayuntamiento.

Witness: JUAN CHRISTOVAL QUINTANA.
Witness: JOSE VELASQUEZ.

The foregoing translation, as made by me from the original in Spanish, is true and correct, to the best of my knowledge and belief.

SAM'L ELLISON.

80 Sworn to and subscribed to before me this 20th day of May, 1875.

JAMES K. PROUDFIT,
Surveyor General.

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
SANTA FÉ, N. MEX., *May* 20, 1875.

The foregoing translation, having been by me compared with its original in Spanish and found correct, is hereby adopted as the official translation.

DAV. J. MILLER, *Translator.*

List of the individuals who are comprised in the grant of the Vallecito, which is commonly called de Lovato, and are as follows:

Tomas Chacon, some surplusages.....
Nepomoceno Estrada..... 150
Juan Sireaco Garcia..... 150
Francisco Archuleta..... 150
Manuel Archuleta..... 200
Juan de Dios Trugio..... 200
Juan Christoval Quintana, on one side..... 300
Juan Benito Sanchez..... 200
Juan Samora, on one side..... 350
Manuel Samora and Jose Samora, on one side, from the boundary of said Sanchez to the cañoncito.....
Jose Martin, from where the cañoncito commences, on the upper side, to the boundary of Francisco Valdes, said Francisco Valdes..... 100
Rafael Valdes..... 100
Juan Felipe Naranjo..... 100
Manuel Martin..... 100
81 Manuel Marquez..... 100
Francisco Gallegos..... 100
Antonio Domingo Garcia..... 100
Jose Manuel Valdez..... 100
Jose Rafael Salas..... 100

Francisco Trujillo..... 100
Jose Rafael Samora..... 325
Juan Pedro Samora 300
Miguel Samora..... 300

One hundred and fifty varas on one and the other side, forming the plaza.

Juan de los Reyes Sena. 100
Francisco Trujillo..... 100
Rafael Valverde.... 100
Pedro Valverde 100
Francisco Espinosa 100
Gabriel Espinosa..... 100
Jose Antonio Gonzales 300
Manuel Silvestre Trujillo... 300
Juan Manuel Olgin..... 300
Martin Vigil..... 300
Manuel Chaves... 300
Manuel de Jesus Salasar..... 300
Francisco Trujillo..... 300
Juan de Jesus Chaves..... 300
Francisco Estevan Chaves... 100
Juan Senon Trujillo..... 300
Miguel Sena 300
Jose Ortiz..... 100
Juan de Jesus Abila 300
Bartolo Chaves..... 300
Juan de Jesus Martin..... 300
Manuel de Jesus Trujillo..... 300
Juan Augustin (illegible)... 100
82 Lionicio Vigil..... 300
Jose Francisco Serdo..... 360
Juan Angela Samora..... 300
Matios Gonzales..... 300
Vicente (illegible).....
Juan Senon Trujillo 300

The above is a true and correct translation as made by me from the original in Spanish, to the best of my knowledge and belief.

SAM'L ELLISON.

Subscribed and sworn to before me this May 20, 1875.

JAMES K. PROUDFIT,
Surveyor General.

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
SANTA FÉ, N. MEX., *May* 20, 1875.

The foregoing translation, having been by me compared with its original in Spanish and found correct, is hereby approved and adopted.

DAV. J. MILLER, *Translator.*

83 *Abstract of Title of the Vallecito de Lovato Grant.*

On February 23rd, 1824, Jose Rafael Samora, a resident of the district of Ojo Caliente, for himself and twenty-five unnamed individuals of the same district, petitioned Francisco Trujillo, constitutional alcalda of Abiquiu, for a grant of land in the Vallecito de Lovato. The petition is dated at Abiquiu, February 23rd, 1824, and signed by Jose Rafael Samora only.

It is document No. 854 (index No. 898) of the archives in the list appended to the report of Surveyor General Pelham, dated September 30th, 1856.

See report on this grant No. 108, dated October 13th, 1875, in Senate Executive Document No. 31, 44th Congress, 1st session.

On February 24th, 1824, the alcalda endorsed his certificate on the application, stating that the facts set forth in the petition were true, the land applied for public, and the applicants not property-holders, signed Francisco Trujillo.

See same document, page 11.

On this report of the alcalda an order was made by the governor, dated February 27th, 1824, directed to the alcalde of Abiquiu, in the following words:

"The land applied for by Jose Rafael Samora, together with the twenty-five accompanying individuals in his petition, in virtue of your report, you may proceed to place them in possession, in order that they may not lose time in their labor until the necessary formalities may be had, which cannot be verified at this time, the excellent deputation not being in session to whom the matter pertains.

"I charge you to treat these unfortunate persons with consideration on placing them in possession, charging for your labor according to their wants and not more than the fee bill allows.

"God and liberty.

"February 27th, 1824.

"To the alcalde of Abiquiu."

See page 14 of doc.

This is unsigned, but the following document shows that it was decreed by Bartolome Baca, then political chief at Santa Fé.

The United States surveyor general who acted on the claim says in his report on this subject, October 13, 1875: "Although the granting decree submitted is not signed, yet the alcalde asserts that it was made by the acting political chief, Bartolme Baca, and I have no doubt of the good faith of the people of the community both now and in the past. I recommend that the grant be confirmed."

"Political chief" (jefe politico) was the title of the governor from 1822 to 1837, under the Mexican government, and Don Bartolome Baca held this office in 1824 and until September 13th, 1825.

The alcalde made his report September 22nd, 1824, of his action under this decree. This is dated at Abiquiu, signed by Francisco

Trujillo, the alcalde, and by Juan Jose de Arze, as secretary of the ayuntamiento, with Juan Cristoval Quintana and Jose Velasquez signing as witnesses to the distribution.

In this report he states his authority as follows:

"I, Francisco Trujillo, constitutional alcalde of the district of Santo Tomas of Abiquiu and San Andres, by virtue of the
84 decree of Bartolome Baca, actual political chief of this province, given at Santa Fé on the 27th of February, 1824, on the petition presented by Jose Rafael Samora and his associates, requesting there *to* be adjudged to them a tract of public land and called the Vallecito de Lovato," and gives the boundaries of the land granted as follows: "On the east the mesa of the Zorita, on the west the cochilla called del Valle de los Caballos, on the north the source of the said river, and on the south the Badito, where the grant joins Juan Galbis."

Ibid., p. 14.

A number of separate allotments of small pieces of farming land appear to have been made, and a list has been found, unsigned and undated, purporting to state the amount of width on the river which each person having such allotment received.

In the petition, however, no name is used except that of Jose Rafael Samora, and in the decree of the governor the same is the case.

It appears by the testimony in the case before the surveyor general that said grant was constantly occupied down to 1844, when, in consequence of the war with the Utes, the inhabitants were compelled to abandon it temporarily. They returned early in 1846, and since that time have continuously occupied the grant.

In May, 1875, the grant was presented to the surveyor general of New Mexico for approval, pursuant to the 8th section of the act of July 22, 1854, entitled "An act to establish the offices of surveyor general in New Mexico," &c.

Testimony was taken from May 20th, 1875, to July 3rd, 1875.

On October 13th, 1875, the surveyor general, Gen. James K. Proudfit, made his report, approving the grant and recommending it for confirmation by Congress.

On March 2nd, 1876, the claim and report were regularly transmitted to Congress by Hon. Zacharia Chandler, Secretary of the Interior.

In 1878 the official survey was made of the grant, and it was found to contain 114,400.54 acres.

Jose Rafael Samora married Dolores Valverdo and had two children only, viz., Juan Pedro and Maria de Jesus. He lived in or near Vallecito, and died not far from Ojo Caliente some time before the American occupation of 1846 and in the same year in which his daughter married. His widow, Dolores Valverde Samode Samora, died after him.

His son, Juan Pedro, died about three years before the death of his father, a young man and unmarried.

At the time of the death of Jose Rafael Samora his only heir was

his daughter, Maria de Jesus Samora de Coca, subject to the rights of the widow.

Maria de Jesus married Cornelio Coca, of the county of Taos, and lived with him after their marriage at San Antonio, in that county.

Cornelio Coca is dead.

For proof of above facts see affidavit of Maria de Jesus Samora de Coca, made September 22nd, 1883, before Joaquin A. Garcia, justice of the peace at Arroyo Seco, Taos county, in presence of Gabriel Lucero.

In this she says that she is the legitimate daughter of Jose Rafael Samora; that he died near Ojo Caliente in the year in which she was married, many years ago; that her mother died afterwards; that she had one brother only, named Juan Pedro, who was older than she and who died unmarried three years before her father.

85 Also see affidavit of Natividad Griego, made July 3, 1885, near Ancones, before Antonio D. Vargas, justice of the peace of precinct No. 8 of Rio Arriba county, in presence of Juan Andres Griego and Pablo Lucero.

In this she says that she is more than eighty years old; that she knew Jose Rafael Samora well; that he lived at Vallecito, and died about forty years before; that he had only two children, named Juan Pedro and Maria de Jesus, and that Maria de Jesus married Cornelio Coca, of Taos.

Also see affidavit of Maria Dolores Archuleta de Jaramillo, of the Rancho de Olguin, between Ancones and Vallecito, made July 3, 1885, before Antonio de Varagas, justice of the peace of precinct No. 8, county of Rio Arriba, in presence of Pedro Jaramillo and Francisco Gonzales.

In this she says that she is more than 62 years old, and has lived in that vicinity all her life; that she remembers well Jose Rafael Samora, who lived at Vallecito, and his wife, Dolores Valverde; that they had two children and no more, named Juan Pedro and Maria de Jesus; that Jose Rafael Samora died many years before the American occupation; that Juan Pedro died before his father, being a young man and unmarried, and that Maria de Jesus married Cornelio Coca, of Taos, and went with him to that county.

Translation.

TERRITORY OF NEW MEXICO, } ss:
County of Taos, }

Before me, the justice of the peace of precinct No. 5 of the county of Taos, on this 22nd day of September, 1883, appeared Maria de Jesus Samora, widow of Cornelio Coca, who, having been duly sworn, says and swears that she is the legitimate daughter of Jose Rafael Samora, grantee of the grant of Vallecito de Lovato, in the county of Rio Arriba; that her father, Jose Rafael Samora, died near Ojo Caliente in the month of December of the same year in which I was married, many years ago, but I cannot state the year;

that my mother died afterwards; that I had one brother only, who was named Juan Pedro, and was older than I was; that my brother died, unmarried, three years before my father died.

That Miguel Samora was my father's brother by the same father and mother, and died at Ojo Caliente, and had several children, who lived at Fernandez and who were named Maria Emiliana Samora, who married Francisco Gardenes (and who died leaving children); Jose Cirilio, who was carried away as a captive by the Navajoes when a child, and Antonio Rosa, who married Francisco Lucero and died, leaving children; that Manuel Samora was a brother of my father by the same father and another mother. Juan Samora and Jose Samora were nephews of my father.

her
MARIA DE JESUS SAMORA x DE COCA.
mark.

Sworn to before me this 22d day of September, 1883, at my office at the town of Arroyo Seco.

JOAQUIN A. GARCIA,
Justice of the Peace.

Witness:
GABRIEL LUCERO.

Translation.

TERRITORY OF NEW MEXICO, }
County of Arriba, } *ss:*

On the 3d day of July, A. D. 1895, before me, Antonio D. Vargas, justice of the peace of precinct No. 8 of the county of Rio Arriba, personally appeared Natividad Griego, and, being by me duly sworn, said as follows:

86 My name is Natividad Griego. I live in the house on the hill with my nephew, Juan Andres Griego; on the hill below the town of Los Acones and above the town of La Cueva. I am very old; I am more than 80 years old. I remember and knew very well Don Jose Rafael Samora, and he died many years ago. He had only two children, who were Juan Pedro Samora and Maria de Jesus Samora.

Maria de Jesus married Cornelio Coca, of Taos county. Don Jose Rafael Samora lived at Vallecito. He died forty years ago, a little more or less.

her
NATIVIDAD x GRIEGO.
mark.

his
JUAN ANDRES x GRIEGO,
signature.
PABLO LUCERO,
Witnesses.

Signed and sworn to before me the day aforesaid.

ANTONIO D. VARGAS,
Justice of the Peace, Precinct No. 8, Rio Arriba County.

Translation.

TERRITORY OF NEW MEXICO, } ss:
County of Arriba, }

On the 3d day of July, 1885, before me, Antonio D. Vargas, justice of the peace of precinct No. 8 of the county of Rio Arriba, personally appeared Dolores Archuleta de Jaramillo, and, being by me duly sworn, declared and said as follows:

My name is Maria Dolores Archuleta de Jaramillo; my residence is at the Rancho de Olguin, between the town of Vallecito and the town of Los Acones. I do not know positively how old I am, but I am certain that I am more than sixty-two years old. I very well remember Don Jose Rafael Samora, who lived at Vallecito, and his wife, who was Dona Dolores Valverde, and I know that they had two children and no more, Juan Pedro and Maria de Jesus. Jose Rafael Samora died many years before the American occupation, in 1846. His son, Juan Pedro, died before his father, being a boy and unmarried. Marie Jesus Samora married Cornelio Coca, of Taos, and went away with him to the county of Taos. I have lived in this vicinity all my life.

her
MARIA DOLORES x ARCHULETA DE JARAMILLO.
mark.

his
PEDRO x JARAMILLO.
mark.

FRANCISCO GONZALES.

Signed and sworn to the day of the above date.

ANTONIO D. VARGAS,
Justice of the Peace of Precinct No. 8, Rio Arriba County.

Translation.

TERRITORY OF NEW MEXICO, } ss:
County of Santa Fé, }

Rafaela Aguilar de Sitnero, being duly sworn, deposes as follows:

My name is Rafaela Aguilar de Sitnero. Many years ago, when I was young, I lived in Ojo Caliente, in the county of Rio Arriba.

At that time I was acquainted with Don Jose Rafael Samora, and I remember him very well. He was married to a daughter of Don Rafael Valverde. I remember that the said Jose Rafael Samora had a daughter, who was named Maria de Jesus Samora.

RAFAELA AGUILAR x DE SITNERO.

Subscribed and sworn to before me this 3rd day of August, 1885.

87

L. B. PRINCE,
Notary Public.

In presence of—
MADALENA CHAVEZ AND
MANUELITA CHAVEZ.

Maria de Jesus Samora de Coca, widow of Cornelio Coca, of San Antonio, Taos county, to John C. Pearce. } Deed.

Dated Sept'r 22, 1883.

Recites that grantor is sole daughter and sole heir of Jose Rafael Samora.

Conveys all right, title, and interest in Vallecito grant.

Acknowledged Sept. 22, 1883, before Joaquin A. Garcia, justice of the peace of precinct No. 5, Taos Co.

Certificate of J. M. Shade, probate clerk of Taos county, to signature and official character of J. A. Garcia.

Recorded, Rio Arriba Co., in Book 7, p. 226, Sept'r 27, 1883.

John C. Pearce (unmarried), of Santa Fé, New Mexico, to George C. Preston. } Deed.

Dated Sept'r 26, 1885.

Conveys all right, title, and interest in Vallecito grant, being interest obtained as above.

Acknowledged Sept'r 26, 1883, before W. M. Berger, notary public.

Recorded, Rio Arriba Co., May 12, 1884, in Book 7, p. 302.

George C. Preston (unmarried), of Santa Fé, N. M., to John Steven, of San Andres, Socorro Co., N. M. } Deed.

Dated November 15, 1883.

Conveys the Vallecito grant, containing 114,400.54 acres, with certain exceptions, guaranteeing amount conveyed to be at least 95,000 acres.

Acknowledged Nov'r 15, 1883, before Wm. M. Berger, notary public.

Recorded, Rio Arriba Co., May 12, 1884, Book No. 7, page 304.

88 John Steven (unmarried), of San Andres, N. M., to John O. A. Carper, of Las Vegas, N. M. } Deed.

Dated January 4, 1884.

Conveys the Vallecito grant, containing 114,400.54 acres, with certain exceptions, guaranteeing amount conveyed to be at least 95,000 acres, being the same property conveyed to him by preceding deed of George C. Preston.

Acknowledged before Wm. M. Berger.

Recorded, Rio Arriba county, Aug. 28, 1889, Book No. 10, page 254, 255.

George C. Preston and wife, of Santa Fé, N. M., to John O. A. Carper, of Las Vegas, N. M. } Deed.

Dated Aug. 20, 1889.
Conveys all right, title, and interest in the Vallecito grant.
Acknowledged Aug. 2, 1889, before R E. Twitchell, notary public.
Recorded, Rio Arriba county, Aug. 28, 1889, Book No. 10, page-250, 251.

John O. A. Carper and wife, of Las Vegas, N. M., to S. Endicott Peabody, of Salem, Mass. } Bargain and sale deed.

Dated Aug. 23, 1889.
Conveys all of the Vallecito de Lovato grant, to be held on such trusts as grantee may hereafter declare for securing bonds of the Rio Grande Irrigation and Colonization Company.
Acknowledged Aug. 23, 1889, before John H. Teitlebaum, notary public.
Recorded Nov. 14, 1889, in Rio Arriba county, in Book No. 10, at pages 276 and 277.

89 PLAINTIFFS' EXHIBIT "C."

PABLO DOMINGUEZ, being duly sworn by the surveyor general, on his oath declares:

By Mr. ELLISON:

Question. What is your name, age, occupation, and residence?
Answer. My name is Pablo Dominguez; my age is sixty-one years; my occupation is farmer, and my residence is here in Santa Fé.
Question. Do you know a tract of land called the Vallecitos? If so, please state where it is situated and whatever material in the premises you may know concerning the same.
Answer. I do know such tract of land. It is situate in the county of Rio Arriba, in this Territory; lies upon both sides of the Ojo Caliente river, to the north of and about nine miles above the spring and the town of Ojo Caliente, upon the same stream. In the year 1844, in the month of September or October, I was at the town of Vallecitos upon said tract, going there in company with and as secretary for Military Inspector Juan A. Archuleta, who visited that section in consequence of the war then in progress with the Ute Indians, and in consequence of which war and the great and extensive depredations of those Indians there I understood that the town was abandoned by the inhabitants. When I was there, as stated, I think there were residing there from twelve to fifteen families, and I observed about as many houses occupied by them, all of wood, and saw also live stock, irrigating ditches, and planted fields of

corn and other produce. The said inhabitants, when the inspector was there as stated, informed him that in consequence of the war they would be compelled to abandon the place until the
90 war should end, and that when peace should be re-established they desired and intended to return, but whether or not they so returned I am not aware.

Question by the SURVEYOR GENERAL: Have you any interest in this claim?

Answer. I have none whatever.

PABLO DOMINGUEZ.

Subscribed and sworn to before me this July 15, 1875.

JAMES K. PROUDFIT,
Surveyor General.

Surveyor General's Opinion.

Opinion.

This claim for a grant of land is brought before me under the eighth article of the treaty of Guadalupe Hidalgo and the eighth section of the act of Congress of July 22, 1854, establishing this office.

From the record it appears that on the 23rd day of February, 1824, Jose Rafael Samora applied to the alcalde of Abiquiu for the land in question for himself and twenty-five others; the alcalde approved it, the acting political chief of the Territory made the concession, and, in pursuance of his orders, Francisco Trujillo, alcalde of Abiquiu, placed the grantees in possession on the 22nd day of September, 1824, allotting to each a certain portion. Proof of undisputed occupation and cultivation in good faith, except during Indian troubles, and the existence of the community at the time of the American occupation of the country in 1846 and since is conclusive. Although the granting decree submitted is not signed, yet the alcalde asserts that it was made by the acting political chief, Bartolome Baca, and I have no doubt of the good faith of the people of the community, both now and in the past.

I recommend that the grant be confirmed by Congress to the heirs and legal representatives of the original grantees, who are the present claimants and occupants of the land.

I respectfully transmit copies of the record in triplicate.

JAMES K. PROUDFIT,
United States Surveyor General.

91 United States surveyor general's office, Santa Fé, N. Mex., October 13, 1875.

92 PLAINTIFFS' EXHIBIT "D."

Testimony of Witnesses, Jose Rafael Zamora et al., Town of Vallecito.

DIONICIO VARGOS, being by the surveyor general duly sworn, on his oath declares:

Question by SAMUEL ELLISON, attorney for the claimants: What is your name, age, occupation, and residence?

Answer. My name is Dionicio Vargos; my age is forty-four years last month; my occupation is farmer, and my residence is near the town of Ojo Caliente, in Rio Arriba county, New Mexico.

Question. Do you know the tract of land in that county known as the Vallecito de Lovato? And, if so, please state where it is situate and what you know about the grant.

Answer. I know the tract mentioned. It is situated in what is known as the Vallecito de Lovato, in Rio Arriba county, upon both sides of the Ojo Caliente river, above the town of that name, the town of Vallecito being distant from the town of Ojo Caliente about fourteen miles to the northward. I have known the place since the year 1844, and from that time to the present it has always existed as a flourishing town, never, since I have known it, containing less than twenty-five families, and it now contains at least forty families. I know the inhabitants of the Vallecito have a grant from the Mexican government, made, I think, in the year 1824, for the tract they occupy there, and I have seen the grant and have seen and am acquainted with the boundary calls of the same. I know the tract quite well, having been for several years a shepherd upon the land, with stock in my charge, and have frequently traversed it subsequently. The boundaries are: On the north, the head of the Ojo Caliente river; on the east, the Jara mesa; on the south, the Little ford and the land of Juan Galvez, and on the west, the Chuchilla de Valle de los Caballos, or Horse Valley ridge, all of which are well-known landmarks, and the land embraced by them has always been recognized as and re-

93 puted to belong to the people of Vallecitos, and I have never heard of any adverse claim to the same.

Question by the SURVEYOR GENERAL: Have you any interest in the land you have described or in the claim therefor?

Answer. I have none whatever now or at any time heretofore.

DIONICIO VARGOS.

Subscribed and sworn to before me this May 20, 1875.

JAMES K. PROUDFIT,
Surveyor General.

94 PLAINTIFFS' EXHIBIT "E."

In the Court of Private Land Claims, Santa Fé, New Mexico, August Term, 1896.

MEREJILDA MARTINEZ ET AL. *versus* UNITED STATES. } No. 142. Vallecito de Lobato Grant.

On August 26th, 1896, in the Federal building, Santa Fé, New Mexico, before Reed, C. J., the following testimony was taken in the above-entitled cause:

Appearances: G. Hill Howard, Esq., for the plaintiffs; Wm. H. Pope, Esq., assistant U. S. attorney, for the Government.

MEREJILDO MARTINEZ, a witness of lawful age being produced, sworn, and examined on the part of the plaintiffs, testified, upon direct examination by Mr. Howard, as follows:

Q. State your name, age, and residence.
A. My name is Merejildo Martines; I am 67 years old; I live in Vallecito, Rio Arriba county, New Mexico.
Q. Upon what grant, if any that you know of, is Vallecito, where you reside, situate?

Mr. POPE: Object as leading.

A. The Vallecito grant.
Q. Do you claim to hold any interest in the said Vallecito grant?
A. Yes.
Q. How do you claim an interest in this grant?
A. As the heir of my grandfather and my father.
Q. What was your father's name?
A. My father's name was Juna Manuel Martinez.
Q. What was your grandfather's name?
A. Manuel Martinez.
Q. How did you- father and grandfather claim to own an interest in this grant?
A. Because my father was one of the parties who took possession there, one of the parties who petitioned for it.
Q. Do you claim an interest in any other way except by inheritance in this grant?
A. No.
Q. Will you examine this paper (Plaintiffs' Exhibit "X") and state what it is?

A. Yes; I know this; this is a deed made to me by a man
95 named Martin Trujillo.

Q. For what land is that deed?

Mr. POPE: Object, as the deed is the best evidence.

A. For land that I bought from him when I was under control of my father. I bought this from this man Martin Trujillo.

Q. This deed speaks of the lands being at the Vallecito de Lobato; is that the same Vallecito as that tract that you have testified about, the grant?

A. Yes.

Q. Who was this Martin Trujillo; how did he hold and obtain an interest in this tract that he sold to you?

A. I do not know how he held it; this man Martin Trujillo was the son of a man named Francisco Trujillo, who had been one of the grantees.

Q. Was he living on this tract of land when you bought it by this deed?

A. Yes; he has always lived there.

Q. Did you know the father of Martin Trujillo?

A. Yes.

Q. Where did he live?

A. He lived in the San Cueva, and recently he moved to Vallecito.

Q. Where were you born?

A. I was born at La Cueva.

Q. Where is La Cueva?

A. It is below Vallecito, between the town of Ojo Catiene and Vallecito.

Q. How long since you yourself personally knew and have been acquainted with the Vallecito tract spoken of?

A. Since I can remember.

Q. Do you know whether your father ever lived upon the Vallecito tract at any time?

Mr. POPE: Object as leading.

A. Yes.

Q. How long did he live upon the Vallecito?

A. Many years. I do not remember how many years. He lived there until he died, in the year '83.

Q. You have spoken of two parties, Francisco Trujillo and the father of Martin Trujillo, as being grantees?

A. Yes.

Q. Can you state any other grantees than these?

A. I think I remember the names; yes. I knew a man named Tomas Chacon.

Q. How long have you known Tomas Chacon?

A. I only knew him a little; he did not live at Vallecito.

96 Q. Did you know Francisco Archuleta?

A. I knew Francisco Archuleta.

Q. Did he have any interest in this grant?

A. I do not know.

Q. Manuel Archuleta?

A. No.

Q. Did you know a man named Juan Trujillo?

A. Also.

Q. Do you know whether he had any interest in this grant?

A. I think he did have a ranch at Tio Olguin, within the boundaries of the lines of the Vallecito grant.

Q. Do you know how he obtained this interest?

A. I do not.

Q. Do you know wherher he was one of the original grantees or not?

A. I do not know.

Q. Did you know Manuel Zamora?

A. I remember very little of this man. I was very young then.

Q. Do you know whether they were grantees of this grant or not?

A. I think they were.

Q. Have they got any descendants that you know of?

A. I do not know their descendants.

Q. Do you know Juan Felipe Naranjo?

A. Yes.

Q. Has he any descendants?

A. Yes; he has sons.

Q. Do you know where his descendants are living?

A. They lived here, and from there, I think, they went to Conejos.

Q. Do you know a man named Juan Jose Manuel Valdez, who is mentioned as one of the grantees in this grant?

A. Yes.

Q. Has he any descendants living?

A. I think that he has none.

Q. Did you know Rafael Jose Salas, mentioned in this grant as one of the grantees?

A. I knew Jose Rafael Salas.

Q. Has he any descendants?

A. I do not think so. I think he has none now.

Q. Are there any of their descendants or purchasers from descendants of any of the original grantees now living on this grant?

A. Yes.

Q. Will you mention some of them?

A. The purchasers there are Antonio Trujillo, and there is a brother of mine, called Jose Manuel Martinez, Carpio Martinez, Jose Ramon Martinez, and another one, Ramon Martines y Mestas. There are so many of them. They are all by purchasers there.

Q. Who have they been purchasers from?

Mr. POPE: Object to this line of examination on the grounds that the deeds are the best evidence of purchase.

97 Mr. HOWARD: I withdraw the question.

Q. Do you know the boundaries of this Vallecito de Lobato tract?

A. No.

Q. Do you know what the north boundary is?

A. No.

Q. Do you know where the Mesa de la Zoreta is?

A. Maybe that it is Sorita. Maybe you mean de la Zarita. It is there on the east side of the Vallecito.

Q. Do you know where the Vallecito de los Caballes is?
A. Yes.
Q. How does that lie with respect to the Vallecito?
A. To the west.
Q. Are you one of the petitioners for the confirmation of this grant?
A. Yes.
Q. Do you know Dionatio Vargas, who gave evidence before the surveyor general in this case?
A. Yes.
Q. Is he living or dead?
A. He is dead.
Q. Do you know Romulo Valdez, who gave evidence before the surveyor general in this case?
A. I know a man called Romulo Valdez.
Q. Is he living?
A. He is living.
Q. You have said that you are 67 years old; did you ever conversewith your father or grandfather with reference to the possession of this Vallecito grant?

Mr. POPE: Object as immaterial and leading and irrelevant and hearsay.

A. Yes.
Q. What did they tell you about the possession of this Vallecito grant?

Mr. POPE: Same objection.

A. They told me the name of the man who had taken it and how it had come into existence.
Q. Did they tell you in reference to living there?
A. Yes.
Q. What did they tell you about it—as to how the possession had been taken up?
A. That is what they talked about.
Q. Did they ever tell you that they lived there?

Mr. POPE: Object as leading.

A. Yes. My father lived there until he died. My grandfather died below here, at La Cueva.

Q. Do you know whether any people lived there before
98 the occupation of this country by the Americans?
A. Yes.
Q. Were there many or few living there?
A. There were many persons.
Q. Were they claiming an interest in this grant?

Mr. POPE: Object as leading.

A. Yes.
Q. Did they have Indian troubles at that time?
A. Yes; at that time many persons were killed.

Q. What Indians were those that they were having difficulties with?
A. The Navajos, the Utes, the Apaches, and other tribes.
Q. What Indians were they that they were at war with just prior to the occupation by the United States?
A. The Navajos.
Q. Who else?
A. And others, Utes and Apaches.
Q. About what time was the Ute war or uprising?
A. In '44.
Q. Was that the time they killed many people at this place?
A. No.
Q. When was that?
A. I do not remember; it was before that.
Q. Did the Utes kill any people on this tract?
A. Yes.
Q. That is all.

Cross-examination by Mr. POPE:

Q. Do you know the Cuchilla del Valle de los Caballes?
A. Yes.
Q. Is it east or west of the settlement of Vallecito?
A. To the west.
Q. How far west from the plaza to the ridge?
A. Perhaps a mile and a half or two miles. It is not very far.
Q. Is it east or west of the Valle de los Caballes?
A. It is east of the Valle de los Caballes. The valley is beyond the ridge.
Q. That is all.

99 ANDRES C. GALLEGOS, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified, upon direct examination by Mr. Howard, as follows:

Q. State your name, age, and residence.
A. My name is Andres C. Gallegos; I was born in the year '33; I live in Vallecito, a little below that place, in the county of Rio Arriba, New Mexico.
Q. Do you know whether this Vallecito is situated on any grant or not?
A. Yes.
Q. What grant?
A. In the Vallecito grant, Lobato grant.
Q. Have you any interest in that grant?
A. Yes.
Q. How did you obtain that interest?
A. I purchased that property that I own.
Q. Who did you purchase from?
A. I bought from Pedro Jaramillo.
Q. Who was Pedro Jaramillo?

A. He was from the Ancones, near the Vallecito.
Q. How was Pedro Jaramillo interested in this grant?
A. Because he had purchased that property that I own.
Q. Do you know from whom he purchased?
A. I do not know.
Q. Do you know whether Pedro Jaramillo was a relative of any of the grantees of this grant?
A. No.
Q. Who did Pedro Jaramillo buy from?
A. I do not know from whom he bought; I do not remember.
Q. Did you buy from any one interested in this grant?
A. Yes; from the son of Pedro Jaramillo, the son of Encarnacion Jaramillo.
Q. Did you buy from any one else?
A. Yes; I bought from Juan Chacon.
Q. Do you know how Juan Chacon had any interest in this grant?
A. I do not remember from whom he bought.
Q, Do you know whether he was an heir to any of the original grantees of this grant?
A. He was not; he was a purchaser like myself.
Q. Here is a paper purporting to be a deed from Maria Archuleta to Jesus Riobal. Do you know that paper, dated in the yeaer 1830?
A. No; I do not remember. The heirs of the property—I claim if I should hear their names read I would be able to state them.
Q. Do you know the names of the original grantees for this Lobato tract?
A. I knew three of them.
100 Q. Who were they?
A. Ramon Salas; I knew a man named Juan Felipe Naranjo.
Q. Did you know Jose Rafael Zamora or Juan Pedro Zamora?
A. I did not know any of those; I knew Julian Trujillo; I knew these three.
Q. Have they any descendants living?
A. The sons of Julian Trujillo are living; they live there at that place.
Q. How long have you known this grant of the Vallecito Lobato?
A. I went there to live at that place, Ancona, in the year '50.
Q. From which direction from Vallecito is the Mesa Caballeros?
A. As I am told, it is to the west.
Q. Do you know what direction the Vadito is from the plaza?
A. To the south.
Q. Do you know the Mesa de la Jara?
A. Yes.
Q. What direction is that from the Placito?
A. To the east.
Q. How does the Mesa de la Jara run; in what direction does it run; in which direction—from north to south or east to west?
A. It is a little stream that comes out there from some willows.
Q. Do you know about where the Mesa Sorita is?

A. I do not.
Q. That is all.

Mr. POPE: I do not care to ask him any questions.

RAMON MARTIN Y LUCERO, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified, upon direct examination by Mr. Howard, as follows:

Q. What is your name, age, and residence?
A. My name is Ramon Martin y Lucero; my age is 49 years; I reside at Los Vallecitos.
Q. Where is this Vallecitos?
A. It is a long way from the line of the Rio del Ojo Calientes, above.
Q. How far is this place north of the Ojo del Caliente?
A. I think it is 20 miles.
Q. Is this Vallecito situate upon any grant that you know of?
A. Yes.
Q. What grant?
A. I do not remember the name of the grant, but it is in a grant; I think it has the name Zamora.
Q. Did you ever hear of the grant Valliceto de Lobato?
A. Yes.
Q. Where is that grant?
A. I think it is here.
Q. Where?
A. In the Valliceto, that place where I live.
101 Q. Have you any interest in this Vallecito de Lobato grant?
A. Yes; I live there.
Q. How did you obtain your interest there?
A. I bought by purchase.
Q. From whom did you buy?
A. From a man called Damien Jiron.
Q. Do you know who Damien Jiron's father was?
A. He told me the name of his father, but I do not remember what it was.
Q. Have you got your deed of transfer?
A. Yes.
Q. Where is it?
A. In my house.
Q. Do you know whether this Jiron was a descendant of any grantee of the grant?
A. I know nothing about that; he was a purchaser there in Vallecito.
Q. Do you know any of the descendants of the original grantees of this grant?
A. I do not know the grantees.
Q. Are any people living on this grant claiming to be descendants of the original grantees?
A. I think so.

Q. Can you mention any of them?

Mr. POPE: Object as immaterial and incompetent.

A. I do not know.

Q. Do you know where the Mesa de la Jara lies from the Plaza Vallecito?

A. Yes.

Q. Which direction does it lie?

A. It is to the east.

Q. Do you know anything about the place called the Mesa de la Sorita?

A. I have heard that name mentioned. Now, there is a point there by the Cañon de la Zora, but that is far away.

Q. What direction is it?

A. To the southeast.

Q. Do you know where the mouth of the Nacimiento is?

A. Yes.

Q. How far is it from the Plaza of Vallecito?

A. I think it is, more or less, 20 miles.

Q. Do you know where Barito is?

A. Yes.

Q. What direction is that from the Plaza of Vallecito?

A. To the south.

Q. About how far?

A. I do not know — long a mile is, and consequently I cannot state what the distance may me correctly.

Q. Do you know anything about leagues?

A. No.

Q. Have you ever seen the grant document for this grant?

A. I have never seen it.

102 Q. Do you know how any grant document to this grant came into the possession of the surveyor general of this Territory?

Mr. POPE: Object, as he says he never saw it.

A. I do not.

Q. That is all.

Mr. POPE: No cross-examination.

MEREJILDO MARTINEZ recalled for the plaintiffs:

Q. Did you ever see the grant document for this Vallecito grant?

A. Yes.

Q. Where did you see it?

A. In Vallecito, in a meeting that he had there.

Q. Who had this document—its custody?

A. Don Antonio Trujillo.

Q. Where did Don Antonio Trujillo live?

A. He lived in the town.

Q. Has he got any interest in this grant?

Mr. POPE: Object as not the proper form of proving interest.

A. Yes.
Q. You saw this document?
A. Yes.
Q. What did they do with the document there?
A. It was delivered to him; he made us assemble to make a contribution to bring it here; the documeut here.
Q. Do you know what they did with the document?
A. It was brought here.
Q. That is all you know about this document?
A. That is all I know.
Q. That is all.

Mr. POPE: No cross-examination.

I hereby certify that the above and foregoing eight and a part pages contain a full, true, and correct transcript of the testimony of the above-named witnesses in the above-named cause.
Santa Fé, New Mexico, September 24th, 1898.

W. J. McPHERSON,
Official Stenographer.

[Endorsed;] Pl. Ex. "E."

(Here follows map marked p. 103.)

104 PLAINTIFF'S EXHIBIT "G."

TERRITORIO DE N. MEXICO, }
Condado del Rio Arriba. }

En Este Punto. de santa cruz del ojo Caliente, por ante mi el alcalde C. Jose Visente Xaramillo, alcalde constitucional de dicho punto y condado del Rio Arriba en 14. dias del mes de Abril de 852. Comparecieron ante mi los C. C. Martin Trugillo y Meregildo Martin quien presento asiendo la persona y bos de su padre Juan Manuel Martinez á quienes conosco y doy Fé y dijo el primero quele bandia al segundo y con efecto le bendio un pedaso de tierra de pan llebar en el paraje que comun mente llaman el ballecito de lobato y contan ser el numero de baras sien baras de una banda del Rio del lado dela plasa y constan ser sus linderos por el norte son con tierras del C. Julian Trugillo, por el sur con tierras dala plasa por el oriente el Rio y por el poniente los limites dela merced y selas bendio con el derecho de solares y legitimo consentimiento de erederos y conlindantes y mas dise Trugillo que selas dio y bendio por el precio de dos lleguas nuebas y sin lecion ninguna y treinta carneros y un fusil, y dise que si mas balen las dichos tierras le ase gracia a Martin y donacion con la demacia de su balor para mera perfecta inrrebocable que el derecho llama inter bibos sediendo y traspasando Trugillo en Martin, su proprio fuero domicilio y becindad y que no habra quien le ponga pleito ni contradision ninguna á Martin por si sus hijos herederos y susesores y en caso de que selo pongan se obligan a salir al sanamiento de esta escritura,

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

asta ponerla en pas, y salbo y portodo lo referido suplicamos al señor alcalde pusiera su autoridad y yo el dicho alcalde, dije que la interponia y la interpuse con cuanta facultad me es conferida por las lelles firmando con el otorgante y el demi asistencia en el ojo Caliente hoy dia dela fecha sitada arriba, que de todo doy Fé.

JOSE VISENTE XARAMILLO, [RUBRICA.]
Alcalde.
MARTIN RUMALDO TRUJILLO. [RUBRICA.]

Assa.: MANUEL JURAMILLO. [RUBRICA.]

105 PLAINTIFF'S EXHIBIT "H."

En este partido de S. Crus del ojo caliente alos 27 dias del mes de Abril del año de 1830.

Antemi el C. Teniente constitucional del dh. puesto comparecieron presentes el C. Mal. Archuleta becino dela jurisdicion de Taos y el C. Juan de Jesus Ruibalid a quienes doi Fé y conosco y dijo el primero qe. le bendia al segundo y con efecto le bendio dosientas baras de tierre parte de ellas de pan llebar y lo demas ariaso medidasi de norte a sur y son sus linderos por el norte con tierras de Juan de Dios Trugillo por el poniente la cuchilla y por el sur con tierras de Esmeregildo Giron y dise el dh. Archuleta que la tierra la ubo por posecion Real. como costa por la merced y dhas. tierras selas dio y bendio por el precio y cantidad de ciento seis ps. dela tierra losque confiesa aver recebido dho. archuleta a su contento y entera satisfasion, y dise qe. si algo mas bale ó baler pueda le ase racia y donasion pura mera perfeta ynrrebocable qe. el derecho llama ynter bibos consedieno do y transportando su proprio fuero y domicilio y becindad para que los ose el sus hijos y erederos y susesores y dise que no le pondra pleito ni demanda ni contradision porci ni sus hijos ni acredores ni susesores antes si se obliga con su persona bienes raises muebles a salir ala defensa hasta sacarlo apas y pas y salbo y se somete a las riales justicias nacionales qe. dios uarde y ror todo lo cual rogamos al espresado Teniente pusiera su autoridad y judicial decreto y llo el dichote niente dije que la ponia y la interpuse con cuanta facultad me es conferida y no firmaron los otor antes por no saber Yselo llo con dos testios de mi asistencia y dos instrumenta les de que doy Fé.

JUAN JOSE OLGUIN. [RUBRICA.]

Asistencia:
JOSE GABRIEL GALLEGO. [RUBRICA.]
T. & JOSE YNACI, *Borrado.*

Hasido protocolado y enrregistrado el antesedente Do cumento en el libro no. 2. de registro hoy este dia 4. de Noviembre A. D. 1870.

JESUS H. ROIVAL,
Escribano de la Corte de Prues.

106 PLAINTIFF'S EXHIBIT "I."

En este puesto de santa Cruz del ojo Caliente A los dus dias del mes de mallo de 1830.

Antemi; el C. teniente Costitusional Dn. Juan Jose Olguin comparesieron presentes los Cn. Juan Siriaco Garsia desta juridision de san Jeronimo de Taos y Diego Antonio Maes ques residente deste partido aquienes doy Fé y conosco y dijo el prime ro qe. le bendia al segundo y con efecto bendio siento sincuenta varas de tierra arrasas las qe. ubo por posesion arriba dela pia sa delos ancones como costa por la merced qe. os laqe. leda por original y son sus linderos por el norte contierras de merejildo jiron y por el sur contierras de de Pomoseno Estrada y porel poniente los limites dela merced y por el oriente los serros y selas dio y vendio por el precio y cantidad de noventa y un peso dela tierra los qe. confiesa aber rosebido d.ho Garsia asu contento y entera satisfasion y dise que si algo mas balen obaler puedan las d.has tierras lease grasia y donacion para mera perpetua ynrrebocable qe. el derecho llama inter vivos esediendo y traspor tando su proprio fueroy domisilio y besindad para qe. las gese el sus hijos erederos y susesores dise que no le pondra pleito demanda ni contradision porsi ni por sus hijos ni erederos ni susesores y si acaso selopone nosea uydo ni atendido en juisio ni fuera dél se obliga con su persona Bienes raises muebles á salir a la defensa asta sacarlo apas y salbo y sesomete alas reales justisias Nasionales qe. Dios Guarde y qe. puede canbiarlas benderlas enajenarlas enla persona qe. mas bien bisto lesan y por todo lo cual Rogamos al espresado teniente pusiera su autoridad y judisial decreto yo el dicho teniente dije la ponia y la interpuse con cuanta facultad me es conferida firmandola conmigo los de mi asistensia y dos estrumentales falta de escrivano Real ni publico qe. no loay en este Reino y selo yó deqe. doy Fé.

JUAN JOSE OLGUIN. [RUBRICA.]

As.: FRANSISCO NARANJO. [RUBRICA.]
As.: JESUS MARIA BARELA,
Secretario. [RUBRICA.]

107 PLAINTIFF'S EXHIBIT "J."

En esta demarcacion; de S. ta chruz del ojo caliente a los Veinte y sinco dias del mes de setie. de mil ochosientos cuaranta y dos.

Por ante mi. el C. Ano. Domingo Lusero jues de pas de dha, demarcacion comparecieron presentes y en sus propias personas Juan Ulivarri y Jose Martines, ambos becinos desta misma a guienes conosco y doy Fé y dijo el primero que le bendia y con efecto bendio al segundo un pedaso de tiera iriasa en el rio del ballecito en el paraje que comun mente llaman el rancho de olgin que costan ser las dichas tierras dosientas Varas y son sus linderos por el norte con tierras de Juan de Dios Truj-llo y por el sur con tierra de Juan Vautista Espinosa y por el oriente y poniente las cuchias dela

sierra y selas y vendio por el precio y cantidad de siento y seys pesos dela tierra y dijo ulivarrique si algo mas valen o baler puedan le hase gracia y donacion pura mera perfecta y inrebocable que derecho llama inter vivos bendiendo y traspasando su propio fuero domicilio y Becindad y que no le pondran pleito demanda ni contradicion por ci sus hijos herederos y susesores y dise Ulibvarri que si en algun tiempo selo ponen no seran oidos en juicio ni fuera del y que solo si se obliga asalir ala defensa asta ponerlo pas y saboy para que esta eschritura tenga la fuersa y balidacion que por derecho se requiere me suplicaron que puciera mi autoridad y decreto Judicial y llo dicho jues dije que la interponia y la interpuse con cuanta facultad mees conferida firmando con migo los demi asistencia y el otorgante quien porno saber firmar yselo poner una chrus en forma de Dro, ques con los que aucto y de todo doy Fee.

Otorgante: JUAN ULIVARRI.

Protocolado y Enrregistrado el antecedente Documento en libro No. 2. de registro tenido para ese fin hoy este 4 de nobiembre A. D. 1870.

JESUS M. ROIVAL,
Escribano de la Corte de Pruevas.

108 PLAINTIFFS' EXHIBIT "K."

TERRITORIO DE NUEVO MEXICO, }
Condado del Rio Arriba. }

En este puesto; de santa Cruz del ojo caliente perteneciente al condado del Rio Arriba alos Dos dias delmes de Abril del año del señor de mil ochocientos cincuenta y dos, por ante el ciudadano Jose Visente Jaramillo Alcalde del mismo punto comparecieron presentes y en sus propias personas el ciudadano Juan Felipe Naranjo, y Manuel Martin, aquienes doy Fé y conosco y dijo el primero que bendia y en efecto bendio al segundo es á saber una suerte de tierra, de cien baras a linia recta enel punto del ballecito que comun mente yaman de Lobato y dicha tierra es Yriasa y son sus linderos por el Norte con tierras del mismo comprador, por el sur con tierras de Maria Getrudes Martin, por el oriente con los limites dela Merced y por el poniente con el balle delos caballos y sela dio y bendio por el pre cio y cantidad de cuarenta y dos obejas y los derechos del señor jues, y dise el dicho Juan Felipe Naranjo que si algo mas bale ó baler pueda la referida tiera dela demasia le hase gracia y donacion para mera perfecta inrrebocable que el derrecho llama inter Vibos esediendo y traspasando su propio fuero y domicilio y besindad en señor Manuel Martin, para que las gose por sí, él sus hijos herederos y sucesores y pueda cambiarlas bender las ó enajenarlas ala persona que mas bien visto le sea, y que no sele pondra pleito demanda ni contradision ninguna y en caso que haiga algun inturvio en el referido Naranjo o en sus hijos no seran hoidos ni entendidos en juicio ni fuera del, antes si se obliga el mencionado Naranjo en caso de algun inturbio á salir ala defensa hasta ponerlo en pacifica

posecion, y que renuncia de cuantas leyes puedan faboreserle como las que actualmente nos 3 igen, y me rogaron que como tal Jues puciera mi autoridad y judicial decreto y yó dicho Alcalde dije que la interponia y la interpuse con la facultad que las Leyes me confieren, y nó firmaron los otorgantes por saber solo con signo de cruz. y los testigos de mi asistencia que son con los que acto por reseptoria y firmado demi sello que doy Fé.

JOSE VICENTE XARAMILLO, [RUBRICA.]
Alcalde.

Otorgante: JUAN FELIPE NARANJO. x

Testigo: SALVADOR LOPES. [RUBRICA.]
Testigo: JUAN BALENTIN ARCHULETA. [RUBRICA.]

109 PLAINTIFFS' EXHIBIT "L."

TERRITORIO DE N. M.,
Condado del Rio Arriba.

Por ante mi Esmeregildo Martinez. uno delos Jueses de paz de dicho condado y precinto numero tersero, comparecieron presentes y en sus propias personas los Ciudadanos Maria Soledad Barela y Jose Manuel Martines, ambos becinos de esta delos ballecitos a quienes conosco y doy Fé, y dijo el primero que bendia al segundo y con efecto bendio al segundo un pedaso de tiera de pan llebar, y consta ser la dicha tierra setenta y sinco vararas las que confiesa la mencionada madre haberle bendido a su hijo Jose Manuel Martinez, y las bendio por el precio y cantidad de siento beinte pesos sellados legales delos estados los que confiesa la dicha Barela haber resevido a su gusto contento y entera satisfacion y son sus linderos por el norte con tierras del Cindadano Ramon Martin. y por el [oriente el Rio]* sur con tierras del siudadano Juan Trugillo. y por el oriente el Rio, y por el poniente los limites dela Merced. y la tiera es la que esta en el Vallecito que comunmente le llaman de Lobato abajo dela plasa. y dijo que si algo mas baliere ó baler puedan la mencionada tierra le base gracia y donacion perpetua inrrebocable que el derecho llama inter Vivos, sediendo y traspa sando la mencionada vendedora en el referido Martinez, todo el fuerode su derecho domicilio y besindad, con tal que no haiga quien le ponga pleito ni embaraso alguno ni ahora ni en ningun otro tiempo habra quien le ponga pleito ni contradision alguna y suplico a las cortes no sean hoidos ni entendidos nien juicio ni fuera del, para que las gose él sús hijos pues para todo lo cual me obligo con mi persona a salir ala defensa hasta poner la dicha tierra en pasifica posecion y salbo, y para que este documento tenga la fuersa y balidacion que por las lelles se requiere suplicamos al señor Jues de paz, Don. Meregildo Martinez. pusiera su autoridad y judicial decreto, y yo el dicho jues dije que lo autorisaba y lo autorise segun la ley me faculta hoy 5. de abril del A. D. 1866.

Otorgante: MARIA SOLEDAD VARELA.

[* Words enclosed in brackets erased in copy.]

En bender y traspasar. Firmado en presencia de un testigo.
CARPIO MARTINEZ.

TERRITORIO DE N. M., }
Condado del Rio Arriba. }

Yo uno delos Jueses de paz. del dicho condado y presinto numero [Trese] * tercero, sertifico y hautoriso este documento conocido por esta corte a Maria Soledad Varela, otorgante dél y ambos contratores en respetar sus condisiones y lo firmo segun la ley me faculta, hoy 5. de abril A. D. de 1866.

Es MEREGILDO MARTINEZ,
Jues de Paz, Alcalde.

Filed for record May 2, 1893. Recorded Sept. 27, 1893, Book No. 11, page 508.

ALEXANDER READ,
P. C. & Recorder.

110 PLAINTIFFS' EXHIBIT "M."

TERRITORIO DE NO. MEXICO, }
Condado del Rio Arriba. }

Por ante mi. el C. Jose Visente Xaramillo. alcalde de dicho condado y recidente en el partido del Ojo Caliente, comparecieron presentes y en sus propias personas Maria de Jesus Samora y Maria Soledad Varela. la primera recidente en el partido del Arrollo Seco, del Condado de Taos, y la segunda recidente en este partido de mi cargo, y dijo la a que le bendia ala 2a un pedaso de tierra, y en efecto le bendio que costan ser las dichas tierras Cincuenta Varas Castellanas, y selas dio y Vendio por el precio y cantidad de una llunta de buelles nuebos y un fusil ubsado contodo y bolsa. y son sus linderos delas dichas tierras porel oriente segun los limites dela merced, por el poniente segun los derrechos dela merced pues es a linia recta por el Sur con tierras dela Viuda del finado Jose Manuel Salazar. y por el norte con tierras dela misma compradora y mas dise la dicha samora que si mas balen o baler puedan las dichas tierras le ase gracia ala dicha Varela dela demacia pura mera perfecta é inrrebocable cediendo y traspasando en dicha Varela su propio fuero domicilio y Vecindad en dicha Varela para que las gose ella y sus hijos herederos y susesores y que pueda Venderlas cambiarlas ó enagenarles en la persona o personas que mas bien bisto le sean, y que no le pondrann pleito demanda ni contr-dision porci ni ella ni sus hijos ni herederos ni susesores y mas tambien dise la dicha Samora que no le pondranpleito demanda ni contradicion y encaso deque selo pucieren suplica alas Justicias no sean oidos ni atendidos ni en Juicio ni fuera dél. antes si suplica a las justicias la compelan y opriman al sanamiento de esta escritura como si fuera por sentencia difinitiba Jues competente consentida y

[* Word enclosed in brackets erased in copy.]

no apelada y Por Todo lo Cual, me suplicaron que como tal alcalde puciera mi autoridad y decreto judicial para que tenga la fuersa y validacion que se requiere y llo el dicho alcalde dije que la interponia y la interpuse con cuanto facultad me es conferida por las Leyes. Firmando con migo dos testigos y la otorgante Ysela poner un cigno de cruz en forma de dicha hoy 3 del mes de febrero de este año de 1852. y de todo doy Fé.

JOSE VISENTE XARAMILLO, [RUBRICA.]
Alcalde.

Otorgante: MARIA DE JESUS SAMORA.

Testigo: JOSE FRANCISCO RUIBAL. [RUBRICA.]
Testigo: JOSE FERNANDES MARTIN.

TERRITORY OF NEW MEXICO, }
County of Rio Arriba. }

Filed for record May 20, 1893. Recorded Sept. 27, 1893, Book No. 11, page 509.

ALEXANDER READ,
P. C. & Recorder.

111 PLAINTIFFS' EXHIBIT "N."

En esta demarcacion de santa Cruz del Ojo Caliente por antemi el jues de paz de dicha demarcacion ante mi domingo Lusero comparecieron presentes y en sus propias personas Maria de Jesus Samora, y su esposo, quienes manifiestan un poder que pr-sento el C. Felipe Trujillo para que sele documenta ran unas tierras que su madre dela dicha Samora le vendio a Trugillo, Maria Dolores Valverde, y por derecho comparecio su mijo haciendo la persona de su madre.

En esta demarcacion en el dia nueve de marzo de este presente año de 1842. comparecieron presentes y en sus propias personas Maria de Jesus Samora y su esposo y él C. Felipe Trujillo, ambos vecinos de esta misma á quienes conosco y doy Fé y dijo Samora que por el poder que para en Trujillo dado por su madre para que le documentara un pedaso de tierra de su pertenencia que hubo por posecion en el vallecito consta la dicha tierra de sesenta y dos y media varas y linia recta las que le vendio la mencionada madre de Maria de Jesus á Trujillo por el precio y cantidad de cuarenta y un pesos los que confiesa haver recebido a su contento y entera satisfaccion y son sus linderos por el nōrte con tierras del C. Estevan Martin por el sur con tierras del mismo comprador por el Oriente la mesá, por el poniente la cuchilla del Valle delos Caballos y dijo si algo mas valen o valer puedan las mencio nadas tierras le hasen gracia y donacion perfecta é inrrebo cable que el derecho llama y intervivos, cediendo y traspasan do la mencionada vendedora en el referido Trujillo todo el fuero desu derrecho, domicilio y vecindad contal gue no higa qulen le ponga pleito ni emvaraso alguno y si en algun tiel po alguien solo puciere contradicion ruega y suplica a

todas justicias nacionales no sean oidos ni entendidos ni en juicio ni fuera de él pues para todo lo cual obligamos nuestras personas hasta poner dichas tierras en salvo, anulando desde ahó para entonses todas leyes que los favorescan, y para que esta escritura tenga la fuersa y atencion que por ley se requiere me rogaron que como tal jues de poz interpuciera mi autoridad y decreto judicial y yo dicho jues de paz dije que la interpo nia y la interpuse con cuantas facultades me es conferida por ley. Firmando con migo los otorgantes y dos testigos de asistencia que es con los que autuo por reseptoria, a falta de escribano juridico queno lo hay en esta demarcacion y en el presente sellado, por no haver del sello que corresponde enla epoca que nos hallamos que de todo doy Fé.

Auto: DOMINGO LUCERO. [RUBRICA.]
Otorgantes: MARIA DE JESUS SAMORA. x
Otorgante: CORNELIO COCA. x

De asistencia: ANTON B. GALBAS. [RUBRICA.]
De asistencia: ANTO SEFERINO MARTINEZ. [RUBRICA.]

112 PLAINTIFFS' EXHIBIT "O."

Sello Cuarto por los Años (——) De Mil ochocientos.

Cuarenta y Mil ochocientos (sello) Cuarenta y Uno.

En esta demarcacion de santa Cruz del ojo Caliente en esta dia primero de enero A. D. 1842. Delante del C. Don, Antonio domino Lucero. Jues de Paz Alcalde de dicha demarcacion compareciron presentes en sus propias personas Maria de Jesus Samora y su esposo cornelio Coca y el C. Felipe Trugillo, ambos vecinos de esta demarcaci-n y á quienes conosco y doy Fé, y dijeron los primeros que le vendian al segundo y en efecto le vendieron es asaver un pedaso de tierra situado en el parajé comunmente conocido como el vallecito de Lobato y constan las dichas tierras de Ciento Dose varas y son sus linderos por el norte con tierras de Maria Dolores Valverde por el sur con tierras del mismo vendedor, por el oriente la mesa o limites dela merced de vallecito de Lovato y por el poniente Lacuchilla del valle de los cavallos, y vendieron los primeros dichas tierras al segundo por el precio y cantidad de 59. pesos que recivieron en buen dinero a todo su usto y satisfacion y disen los primeros que si algo mas valen o valer puedan le hasen al segundo donacion pura perfecta é irrevocable que el derecho llama y ínteres, sediendo y traspasando todo el fuero de su derecho domicilio y vecindad sin— que en esto haiga quien le ponga pleito ni embaraso alguno, ni por nosotros ni sus hijos ni susesores pues desde ahora para entonses revoco y anulo todas cuantas Lelles me puedan favoreser para todo lo cual suplico a las reales justicias nacionales que si yo ó alguien les ponga embaraso alguno que no seàn oidos pero ni entendidos ni en juicio ni fuera de él: y para que esta escritura tenga la fuersa y valides que por ley me suplicaron ínterpucira mi autoridad y judicial decreto y yo dicho jues de paz "Alcalde" dije que la ínterponia y la interpuse, con cuanta facultad me es conferida por ley firmando

con migo los otorgantes y dos testigos de asistencia que autorisado por la secretaria á falta deno haver secretario Real que no lo hay en los terminos de derecho y en este presente papel por no haver del que coresponde, que de todo doy Fé.

ANTO'O DOMINGO LUCERO.
Otorgante: MARIA DE JESUS SAMORA. x
Otorgante: CORNELIO COCA. x

De asistencia: ANTONIO D. GALBAN. [RUBRICA.]
De " ANTONIO SEFERINO MARTINEZ.
[RUBRICA.]

Filed for record May 2, 1893. Recorded Sept. 26, 1893, Book No. 11, page 507.

ALEXANDER READ,
P. C. & Recorder.

113 PLAINTIFFS' EXHIBIT "P."

TERRITORIO DE N. MEXICO, }
Condado del Rio Arriba. }

En este punto. de santa cruz del ojo Caliente, por ante mi el alcalde C. Jose Visente Xaramillo, alcalde constitucional de dicho punto y condado del Rio Arriba en 14. dias del mes de Abril de –852. comparecieron ante mi los C. C. Martin Trugillo y Meregildo Martin quien presento asiendo la persona y bos de su padre Juan Manuel Martinez. á quienes conosco y doy Fé y dijo el primero que le bendia al segundo y con efecto le bendio un pedaso de tierra de pan llebar en el paraje que comun mente llaman el ballecito de lobato y contan ser el numero de baras sien baras de una banda del Rio del lado de la plasa y constan ser sus linderos por el norte son con tierras del C. Julian Trugillo, por el sur con tierras dala plasa por el oriente el Rio y por el poniente los limites de la merced y selas bendio con el derecho de solares y legitimo consentimiento de erederos y conlindantes y mas dice Trugillo que selas dio y bendio por el precio de dos lleguas nuebas y sin lecion ninguna y treinta carneros y un fusil, y dise que si mas balen las dichos tierras le ase gracia a Martin y donacion con la demacia de su balor para mera perfecta inrrebocable que el derecho llama inter bibos sediendo y traspasando Trugillo en Martin, su propio fuero domicilio y becindad y que no habra quien le ponga pleito ni contradision ninguna á Martin por si sus hijos herederos y susesores y en caso de que selo pongan se obligan a salir al sanamiento de esta escritura, asta poner la en paz, y salbo y portodo lo referido suplicamos al señor alcalde pusiera su autoridad y yo el dicho alcalde, dije que la interponia y la interpuse con cuanta facultad me es conferida por las lelles firmando con el otorgante y el demi asistencia en el ojo Caliente hoy dia dela fecha sitada arriba, que de todo doy Fé.

JOSE VISENTE XARAMILLO, *Alcalde.* [RUBRICA.]
MARTIN RUMALDO TRUJILLO. [RUBRICA.]

Assa: MANUEL JARAMILLO. [RUBRICA.]

114 DEFENDANT'S EXHIBIT "A."

In the Court of Private Land Claims, September Term, 1897.

MEREJILDA MARTINEZ ET AL. *vs.* UNITED STATES. } No. 142. Vallecito de Lobato Grant.

S. ENDICOTT PEABODY *vs.* UNITED STATES. } No. 204. Vallecito de Lobato Grant.

Depositions Taken Before Hon. Henry C. Sluss, Associate Justice, Federal Building, Santa Fé, New Mexico, September 16th, 1897.

Present: F. W. Clancy, Esq., for claimants in No. 204; G. Hill Howard, Esq., for claimants in No. 142; William H. Pope, Esq., for the Government.

ANTONIO DE VARGAS, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. State your name, age, and residence.

A. My name is Antonio de Vargas. I am 43 years of age. I live at Ojo Calientes, Rio Arriba county, New Mexico.

Q. Are you acquainted with the town of Vallecito?

A. Yes.

Q. Acquainted with the country immediately west of the town of Vallecito?

A. Yes.

Q. How long have you known that country?

A. I have known it for several years.

Q. Did you know it when you were a boy?

A. Since I was young I used to go around there.

Q. Do you know where the Vallecito de los Carvallos is?

A. Yes.

Q. Do you know where Ojito de los Carvallos is?

A. Yes.

Q. Where is that with respect to the Vallecito de los Carvallos?

A. To the west.

Q. State whether or not it is the first cuchilla west of the town of Vallecito.

A. Yes; it is the first one. It is called Cuchilla del Vallecito de los Carvallos.

115 Q. Do you know the Mesa de la Jarita?

A. Yes.

Q. Where is it?

A. It lies to the east of the Vallecito river. It is the dividing line between Vallecitos and Petaca.

Q. How far is it east of the town of Vallecito?

A. Right opposite that town; it is very near. From there it comes meandering.

Q. State whether or not it is the first mesa east of the town of Vallecito.

A. Yes; it is the first.

Cross-examination by Mr. CLANCY:

Q. Is there not another cuchilla west of the Vallecito de los Carvallos?

A. There are a great many, but that is the only one they call Cuchilla del Vallecito de los Carvallos.

Q. I did not ask you that. I want you to answer the question. Is there not on the western side of the Vallecito de los Carvallos another cuchilla?

A. Yes; that is called cuchilla near the El Rito river.

Q. Consider the witness for the plaintiff- now.

Direct examination by Mr. CLANCY:

Q. Have you ever known by reputation in that part of the country that Jose Refael Samora lived at Vallecito?

A. I did not know it of my own knowledge. I never knew him personally. I have seen some old documents in the hands of Don Antonio Trujillo, who lives now at Vallecito, and the name of this man Samora appears in some of these papers that I saw there.

Q. Did you not say to me, Mr. De Vargas, that you had heard that this Samora lived there at Vallecito?

A. I was so informed by Antonio Trujillo at the time when I saw the document referred to already.

I hereby certify that the above and foregoing one and a part pages contain a full, true, and correct transcript of all the testimony of the above-named witness taken in the above-entitled causes on the above-named date.

W. J. McPHERSON,
Official Stenographer.

[Endorsed:] Nos. 142 and 204. Deposition of Antonio de Vargas. Filed in the office of the clerk court of private land claims Sep. 18, 1897. Jas H. Reeder, clerk, by —— ——, deputy.

116 CATRON'S EXHIBIT "A," PATENT TO THE TIERRA AMARILLA GRANT.

The United States of America to all — whom these presents shall come, Greeting:

Whereas under the provisions of the eighth section of the act of Congress approved on the twenty-second day of July, anno Domini one thousand eight hundred and fifty-four, entitled "An act to establish the offices of surveyor general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein, and for other purposes," the private land claim of Francisco Martinez, situate in the then Territory of New Mexico, was recommended for confirma-

tion by the surveyor general for said Territory of New Mexico in his report to Congress dated September tenth, A. D. one thousand eight hundred and fifty-six, which said report is in the words and figures as follows, to wit:

Francisco Martinez, present claimant, heir of Manuel Martinez, original grantee.

"This claim was filed in this office on the 25th of August, 1856.

"On the 23rd day of April, 1832, Manuel Martinez petitioned Santiago Abreu, political chief of the Territory of New Mexico, for a certain tract of — situated in the county of Rio Arriba, called the Tierra Amarilla, and bounded on the north by the Navajo river, on the south by the Nutrias river, on the east the mountain
117 range, and on the west the mouth of the Laguna de los Caballos.

"On the 29th of April, 1832, this petition was referred *to* the political chief to the most excellent territorial deputation, who on the same day referred it to the corporation of Abiquiu, requiring it to report on the propriety of making the grant as prayed for by the petition.

"On the 15th day of May, 1832, the corporation of Abiquiu reported favorably on the petition, requiring, however, that the pastures and watering places should remain free for the benefit of the inhabitants of Abiquiu.

"On the 16th of July, 1832, Manuel Martinez petitioned anew the political chief, objecting to the pastures and watering places being excepted.

"On the 20th day of July, 1832, the most excellent territorial deputation granted to Manuel Martinez and those who should accompany him the land petitioned for under certain conditions therein contained, and directed the constitutional justice of Abiquiu to place the parties in possession of the land so granted, leaving the pastures, watering places, and roads free according to the customs existing in every settlement.

"The action of this office is taken on the original documents filed by the claimant.

"The signatures by the testimony of Donaciano Vigil are proven to be genuine.

"The absence of the certificate of the justice of Abiquiu
118 does not invalidate the grant, the testimony presented in the case showing that the justice of Abiquiu proceeded to place the parties in possession, but was compelled to return to Abiquiu on account of the hostilities of the Indians.

"The testimony also shows that the original grantee and the present claimant have been in the peaceable and quiet possession of the land for a period of twenty-two years.

"The provincial deputation was authorized by the laws of the Republic of Mexico to make donations of land to individuals, and, this case being covered by the treaty of Guadalupe Hidalgo and the decision of the Supreme Court of the United States in the case of J. C. Fremont *vs.* The U. S., the grant made Manuel Martinez, of

which Francisco Martinez is the present claimant, is deemed by this office to be a good and valid grant, and the Congress of the United States is hereby respectfully recommended to confirm the same and cause a patent to be issued therefor by the proper department and the land embraced within the boundaries set forth in said grant to be surveyed.

"(Signed) WM. PELHAM,
"*Surveyor General of New Mexico.*

"Surveyor general's office, Santa Fé, New Mexico, September 10, 1856.

"SURVEYOR GENELAL'S OFFICE,
119 "SANTA FÉ, NEW MEXICO, *September* 30, 1856.

"I certify the foregoing to be a true copy of the original on file in my office.

"WM. PELHAM,
"*Surveyor General of New Mexico.*"

And whereas it further appears that said private land claim was subsequently confirmed as number three by the first section of the act of Congress approved June twenty-first, A. D. one thousand eight hundred and sixty, entitled "An act to confirm certain private land claims in the Territory of New Mexico;"

And whereas there has been deposited in the General Land Office of the United States a return, with the descriptive notes and plat of survey of the said claim, confirmed as aforesaid, authenticated by the signature of the United States surveyor general for the Territory of New Mexico, which descriptive notes and plat of survey are in the words and figures as follows, to wit:

"Descriptive notes of the survey of the Tierra Amarilla grant, in the Territory of New Mexico and State of Colorado, confirmed as private land claim number three, to Francisco Martinez, heir of Manuel Martinez, by act of Congress approved June twenty-first, eighteen hundred and sixty, and surveyed in July, eighteen
120 hundred and seventy-six, by Sawyer and McBroom, under their contract number sixty-eight, of April fifteenth, eighteen hundred and seventy-six.

"Beginning at a stone eighteen by twelve by twelve inches in size, marked 'T. A. Beg. Cor.,' in mound of earth two and one-half feet high, with four pits eighteen by twenty-four by twelve inches deep, also with mound of stone, at a point on the south boundary of the Tierra Amarilla grant on the right bank of the Nutrias river, from which the house of William E. Arny bears south thirty degrees west, five hundred links distant, thence up the right bank of said Nutrias river, with the meanders of that stream, on a course south eighty-six degrees east—variation of needle, thirteen degrees and thirty-four minutes east—at fifty-five chains, change course to north fifty-four degrees and forty-five minutes east; at one mile, a stone fourteen by twelve by twelve inches in size, marked '1 M. Cor.' on

side facing line run, in mound of earth two and one-half feet high, with four pits eighteen by twenty-four by twelve inches deep; at one mile and thirty-seven chains, change course; thence north seventy-two degrees east; at one mile and sixty-nine chains, change course; thence north twenty-four degrees and fifteen minutes west; at two miles from beginning corner, a stone *a stone* fifteen by fourteen by six inches in size, marked '2 M. Cor.' on side facing line
121 run, in mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at two miles and fourteen chains, change course; thence north twenty-seven degrees east; at two miles and sixty-eight chains, change course; thence north eighty-seven degrees and thirty minutes east; at three miles, a stone twelve by ten by ten inches in size, marked '3 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at three miles and nine chains, from thence on course north fifty-eight degrees and thirty minutes east; at three miles and seventy-one chains, change course; thence south eighty-seven degrees east; at four miles, a stone twelve by ten by eight inches in size, marked '4 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at four miles fifty-six chains and fifty links, change course; thence north thirty-four degrees and thirty minutes east; at five miles, a stone eighteen by twelve by ten inches in size, marked '5 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at five miles and twenty chains, change course; thence north seventy-five degrees and thirty minutes east; at six miles, a stone twelve by ten by six inches in size, marked '6 M. Cor.' on side facing line run, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at five miles and twenty chains,
change course; thence north seventy-five degrees and
122 thirty minutes east; at six miles, a stone twelve by ten by six inches in size, marked '6 M. Cor.' on side facing line run, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at six miles and forty-four chains, change course; thence north twenty-four degrees east; at seven miles, a stone ten by eight by eight inches in size, marked '7 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; thence north eighty-nine degrees east; at seven miles and sixty-seven chains, change course; thence south eighty-seven degrees and thirty minutes east; at eight miles, a stone eighteen by six by six inches in size, marked '8 M. Cor.' — side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at nine miles, a stone twelve by nine by six inches in size, marked '9 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at nine miles and sixty-eight chains, change course;

thence north forty-seven degrees and thirty minutes east; at ten miles, a stone forty by twenty-four by sixteen inches in size, marked '10 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at ten miles and eleven chains, change course.

"Thence north sixty-six degrees and thirty minutes east;
123 at ten miles and forty-six chains, change course.

"Thence north forty degrees and thirty minutes east; at ten miles and seventy chains, change course.

"Thence due east; at eleven miles, a stone forty by fifty by thirty inches in size, marked '11 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep, from which an aspen eight inches in diameter bears north forty-five degrees east, fifteen links distant, an aspen twelve inches in diameter bears south, twenty-five links distant; at twelve miles, an aspen tree eight inches in diameter, marked '12 M. Cor.' on west side; at twelve miles and seventy-six chains, change course; thence south forty-seven degrees and thirty minutes east; at thirteen miles, a pine tree eight inches in diameter, marked '13 M. Cor.' on side facing line run, from which a pine tree six inches in diameter bears north forty-two degrees, west eighty links distant, and a pine tree six inches in diameter bears south forty-eight degrees east, ninety-five links distant; at thirteen miles and thirty-six chains, change course.

"Thence north seventy-one degrees and thirty minutes east; at thirteen miles and seventy chains, head of Nutrias river.

"Thence east; at fourteen miles, a pine tree twelve inches in diameter, marked '14 M. Cor.' on side facing line run, from
124 which a pine tree nine inches in diameter bears west, seventy links distant; at fifteen miles, a tree ten inches in diameter, marked '15 M. Cor.' on west side and T. A. on north side, from which a pine eight inches in diameter bears west, thirty-four links distant, a pine six inches in diameter bears south thirty degrees west, twenty-eight links distant; at sixteen miles, a stone sixteen by ten by six inches in size, marked '16 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at seventeen miles, a stone eighteen by twelve by seven inches in size, marked '17 M. Cor.' on side facing line run, with mound of earth two and one half feet high from four pits eighteen by twenty-four by twelve inches deep; at eighteen miles, a pine tree twelve inches in diameter, marked '18 M. Cor.' on side facing line run, from which a pine thirteen inches in diameter bears north, one hundred and thirteen links distant; at nineteen miles, a stone eighteen by fifteen by twelve inches in size, marked '19 M. Cor.' on side facing line run, with mound of stone two and one-half feet high, from which a pine six inches in diameter bears south, forty-five degrees east one hundred links distant; at twenty miles, a stone seventeen by ten by ten inches in size, marked '20 M. Cor.' on west side, with mound of

stone two and one-half feet high; at twenty miles seven chains and fourteen links, a stone thirty-six by twenty-five by ten inches in size, marked 'S. E. Cor.' T. A. on side facing grant, with
125 mound of stone three and one-half feet high, same being at the foot of the main range of the Chama mountains and the southeast corner of said Tierra Amarilla grant, from which southeast corner a pine tree fourteen inches in diameter bears north twenty degrees east, sixty-six links distant, a pine nine inches in diameter bears south thirty-three degrees and thirty minutes east, one hundred and six links distant, and a pine ten inches in diameter bears east, one hundred and twelve links distant.

"Thence from said southeast corner of said grant, along the west foot of said mountains, on a course north nine degrees forty-five minutes west—variation of needle, thirteen degrees and twenty-six minutes east—at one mile, a pine tree thirty inches in diameter, marked '1 M. Cor.' on south side and the letters 'T. A.' on the west, from which a pine twelve inches in diameter bears north fifteen degrees east, twenty links distant; also a pine twenty-four inches in diameter bears north forty-five degrees west, forty-four links distant; at one mile and fifty-six chains, change course.

"Thence north seventeen degrees east; at two miles, a stone twenty by twenty by twenty inches in size, marked '2 M. Cor.' on side facing line run, with mound of stone two and one-half feet high, from which a pine eighteen inches in diameter bears south, sixty links distant; at three miles, an aspen tree fifteen inches in diam-
126 eter, marked '3 M. Cor.' on side facing line run, from which a pine eight inches in diameter bears south forty-two degrees east, twenty-five links distant; also an aspen six inches in diameter bears south, ten links distant, and an aspen twelve inches in diameter bears west, fifteen links distant; at three miles forty-one chains and fifty links, a pine tree twenty-two inches in diameter, from thence north sixty degrees west; at four miles, a stone fourteen by twelve by eight inches in size, marked '4 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at four miles and thirty-nine chains, a pine line tree thirty-eight inches in diameter.

"Thence north eighty-eight degrees west; at five miles, a stone sixteen by twelve by seven inches in size, marked '5 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at five miles and eleven chains, change course.

"Thence north fifty degrees and thirty minutes west; at six miles, a stone sixteen by twelve by five inches in size, marked '6 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at six miles and forty-four chains, change course.

"Thence north seventy-five degrees west; at seven miles, a stone twelve by ten by eight inches in size, marked '7 M. Cor.' on
127 side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at seven miles and ten chains, change course.

"Thence north thirty-nine degrees west; at seven miles and sixty-four chains, change course.

"Thence north fifty-three degrees and forty-five minutes west; at eight miles, a stone twelve by ten by twelve inches in size, marked '8 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at eight miles and fifty-nine chains, change course.

"Thence north seventeen degrees west; at nine miles, a stone eighteen by twelve by twelve inches in size, marked '9 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at ten miles, a stone twenty by ten by five inches in size, marked '10 M. Cor.' on side facing line run, with earth mound two and one-half feet high, from four pits eighteen by twenty-four by twelve inches deep.

"Thence north thirty-two degrees and thirty minutes west; at eleven miles, a stone twelve by twelve by ten inches in size, marked '11 M. Cor.' on side facing line run, with earth mound two and one-half feet high from four pits eighteen by twenty-four by
128 twelve inches deep.

"Thence north sixteen degrees and thirty minutes east; at twelve miles, a pine twelve inches in diameter, marked '12 M. Cor.' on side facing line run and the letters T. A. cut on west side; at thirteen miles, a pine tree twenty inches in diameter, marked '13 M. Cor.' on side facing line run, from which a pine ten inches in diameter bears west, forty links distant, and a pine nine inches in diameter bears north ten degrees west, thirty-five links distant; at fourteen miles, a pine tree fourteen inches in diameter, marked '14 M. Cor.' on side facing line run, from which a pine twelve inches in diameter bears north twenty-five degrees west, ninety-two links distant; also a pine ten inches in diameter bears south sixty-three degrees east, fifty-six links distant; also a pine six inches in diameter bears north eighty-five degrees east, sixteen links distant, and a pine twelve inches in diameter bears south, twelve links distant.

"Thence north forty-seven degrees and forty-five minutes east—variation of needle, thirteen degrees and thirty-eight minutes east—at fifteen miles, a boulder protruding out of earth sixty by forty by thirty-six inches in size, marked '15 M. Cor.' on southwest face, with mound of stone, from which a pine five inches in diameter bears south five degrees west, twenty-eight links distant, and
129 a pine twelve inches in diameter bears east, ninety links distant; at sixteen miles, a stone twenty by ten by eight inches in size, marked '16 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at sixteen miles and seventy chains, a boulder twenty-four by twenty-four inches in size, marked on top with the letters T. A.

"Thence north at seventeen miles, a stone fifty by twenty-four by twenty inches in size, marked '17 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits

eighteen by twenty-four by twelve inches deep; at seventeen miles and twenty-two chains, change course.

"Thence north thirteen degrees west; at eighteen miles, an aspen tree eight inches in diameter, marked '18 M. Cor.' on side facing line run and letters T. A. on side facing grant, from which an aspen six inches in diameter bears east, twenty-five links distant, an aspen five inches in diameter bears north thirty degrees west, fifty-eight links distant, and an aspen seven inches in diameter bears west, forty links distant; at eighteen miles and forty chains, a pine tree sixteen inches in diameter.

"Thence north fifty-three degrees and thirty minutes west; at nineteen miles, a pine tree twenty inches in diameter, marked '19 M. Cor.' on side facing line run, from which a pine ten
130 inches in diameter bears west, seventy links distant, and a pine eight inches in diameter bears south twelve degrees east, forty-two links distant; at twenty miles, an aspen tree six inches in diameter, marked '20 M. Cor.' on side facing line run, from which an aspen tree six inches in diameter bears south, ten links distant; at twenty-one miles, a pine tree twelve inches in diameter, marked '21 M. Cor.' on side facing line run, with the letters T. A. on side facing grant, from which a pine fourteen inches in diameter bears north, ten links distant, a pine eighteen inches in diameter bears west, twenty-five links distant, and a pine twelve inches in diameter bears south forty-five degrees east, ten links distant; at twenty-two miles an aspen tree twelve inches in diameter, marked '22 M. Cor.' on side facing line run, and letters T. A. on west side, from which an aspen tree four inches in diameter bears south, thirty-two links distant, and an aspen twelve inches in diameter bears north fifty-two degrees west, forty links distant; at twenty-three miles, a pine tree nine inches in diameter, marked '23 M. Cor.' on side facing line run, from which a pine ten inches in diameter bears north twenty degrees west, fifty links distant, and a pine seven inches in diameter bears south, one hundred and ten links distant; at twenty-four miles, a pine tree sixteen inches in diameter, marked "24 M. Cor.' on side facing line run and
131 letters T. A. on west side, from which a pine twelve inches in diameter bear south, forty links distant; at twenty-five miles, a stake four inches square, three feet long, marked '25 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at twenty-six miles, a pine tree twelve inches in diameter, marked "26 M. Cor.' on side facing line run, from which a pine eight inches in diameter bears north forty-five degrees east, thirty links distant, and a pine nine inches in diameter bears north, eighty-seven links distant.

"Thence north twenty-three degrees and thirty minutes west; at twenty-seven miles, a stone sixteen by twelve by ten inches in size, marked '27 M. Cor.' on side facing line run, with mound of stone.

"Thence north, at twenty-eight miles, a stone twelve by ten by

six inches in size, marked '28 M. Cor.' on side facing line run, with mound of stone two and one-half feet high.

"Thence north four degrees and forty-five minutes east; at twenty-nine miles, a stone sixteen by twelve by eight inches in size, marked '29 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at thirty miles, a stone twenty by twenty by fifteen in size, marked '30 M. Cor.' on side facing line run, with mound of stone two and one-half feet high.

132 "Thence north seventy-seven degrees and thirty minutes west; at thirty-one miles, a stone sixteen by twelve by twelve inches in size, marked '31 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at thirty-two miles, a pine tree seventeen inches in diameter, marked '32 M. Cor.' on side facing line run, from which a pine thirteen inches in diameter bears south forty-one degrees east, sixty-one links distant, and a pine fourteen inches in diameter bears east, twenty-seven links distant; at thirty-three miles, a pine tree thirteen inches in diameter, marked '33 M. Cor.' on side facing line run, with the letters T. A. on side facing grant, from which a pine eighteen inches in diameter bears north, thirty-seven links distant, and a pine ten inches in diameter bears south seventy-one degrees west, forty-three links distant; at thirty-four miles, a pine tree sixteen inches in diameter, marked '34 M. Cor.' on side facing line run, from which a pine thirteen inches in diameter bears south sixty degrees west, thirty-seven links distant, a pine sixteen inches in diameter bears north forty degrees east, forty-three links distant; at thirty-four miles and sixty chains, change course.

"Thence north sixty-two degrees west; at thirty-five miles, a stone twelve by ten by eight inches in size, marked '35 M Cor.' on side facing line run, with mound of stone two and one-half feet

133 high, from which a dead pine fourteen inches in diameter bears south forty-five degrees west, fifty links distant.

"Thence north twenty-seven degrees and fifteen minutes west; at thirty-six miles, a pine tree twenty-four inches in diameter, marked '36 M. Cor.' on side facing line run, from which a pine eight inches in diameter bears west, twenty-five links distant, and a pine ten inches in diameter bears north, fifteen links distant; at thirty-seven miles, a stone twelve by twelve by twelve inches in size, marked '37 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep, from which a pine thirteen inches in diameter bears north forty degrees east, twenty-seven links distant, and a pine ten inches in diameter bears south, forty-seven links distant; at thirty-eight miles, a large boulder twenty by twenty by fifteen feet in size, marked '38 M. Cor.' on side facing line run, from which a rock or point of bluff bears north ten degrees east, about ten chains distant; at thirty-eight miles and twenty-eight chains, change course.

"Thence north thirty-one degrees west; at thirty-nine miles, a stone seventeen by twelve by twelve inches in size, marked '39 M.

Cor.' on side facing line run, with stone mound two and one-half feet high, from which a pine sixteen inches in diameter bears
134 south thirty-three degrees east, forty-two links distant, and a pine seven inches in diameter bears north twenty-six degrees east, thirty-nine links distant; at forty miles, a stone sixteen by ten by six inches in size, marked '40 M. Cor.' on side facing line run, with mound of stone; at forty-one miles, a stone thirty-six by twenty by twenty inches in size, marked '41 M. Cor.' on side facing line run, with mound of stone three feet high; at forty-two miles, a stone twenty-seven by sixteen by twelve inches in size, marked '42 M. Cor.' on side facing line run, with mound of stone three feet high; at forty-three miles, a stone twenty-six by eighteen by fifteen inches in size, marked '43 M. Cor.' on side facing line run, with stone mound two and one-half feet high, from which a pine eight inches in diameter bears south thirteen degrees east, sixty-three links distant, and a pine six inches in diameter bears north fourteen degrees east, thirty-seven links distant; at forty-four miles, a stone eighteen by fifteen by twelve inches in size, marked '44 M. Cor.' on side facing line run, with stone mound two and one-half feet high, from which a pine seven inches in diameter bears west thirty-six links distant, and a pine nine inches in diameter bears north forty-three degrees east, ninety links distant; at forty-five miles, a stone sixteen by twelve by ten inches in size, marked '45 M. Cor.' on side facing line run, with earth mound two and one-half feet high from four
135 pits eighteen by twenty-four by twelve inches deep; at forty-six miles, a stone sixteen by twelve by ten inches in size, marked '46 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep, from which a pine tree six inches in diameter bears south sixteen degrees east, one hundred and ten links distant; at forty-seven miles, a stone thirty by twelve by twelve inches in size, marked '47 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at forty-eight miles, a stone eighteen by eighteen by twelve inches in size, marked '48 M. Cor.' on side facing line run, with mound of stone two and one-half feet high; at forty-nine miles, a stone thirty by twenty by twenty inches in size, marked '49 M. Cor.' on side facing line run, with mound of stone three feet high; at forty-nine miles and thirty-seven chains, change course.

"Thence north seven degrees west; at fifty miles, a boulder four by four by three feet in size, marked '50 M. Cor.' on side facing line run, with mound of stone three feet high; at fifty-one miles, a stone forty-eight by forty-eight by *by* twenty-four inches in size, marked '51 M. Cor.' on side facing line run, with mound of stone three feet high; at fifty-two miles, a stone twenty by fourteen by twelve inches in size, marked '52 M. Cor.' on side facing line run, with
136 stone mound two and one-half feet high; at fifty-three miles, a stone eighteen by eighteen by twelve inches in size, marked '53 M. Cor.' on side facing line run, with stone mound two and one-half feet high; at fifty-three miles and forty chains, change course.

"Thence north sixty-three degrees and twenty-seven minutes west; at fifty-four miles, a stone twenty-three by fifteen by ten inches in size, marked '54 M. Cor.' on side facing line run, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at fifty-five miles, a stone eighteen by twenty-four by six inches in size, marked '55 M. Cor.' on side facing line run, with stone mound two and one-half feet high; at fifty-six miles, a stone eighteen by twenty by ten inches in size, marked '56 M. Cor.' on side facing line run, with stone mound two and one-half feet high; at fifty-six miles and sixty chains, a stone twenty-four by twenty by sixteen inches in size, marked T. A. N. E. Cor. with mound of stone four and one-half feet high, same being at the head of the Navajo river and the northeast corner of said Tierra Amarilla grant, from which a prominent point of rocks bears north twenty degrees west, about forty chains distant; also a prominent point of rocks bears north twenty-five degrees east, about one mile distant; a large vertical crevice in side of bluff bears north fifty-five degrees
137 west, seventy chains distant; a prominent spur of rocky bluff running close down to the river bears south fifty-seven degrees west; a stone thirty by twenty by sixteen inches in size, marked T. A. W. M. on side facing northeast corner, with mound of stone four feet high, bears south seventy degrees east, two hundred links distant, same being witness monument for said northeast corner.

"Thence from the northeast corner of said grant, on a meander down the left bank of the Navajo river, on a course south forty-five degrees and thirty minutes west—variation of needle, thirteen degrees and thirty-five minutes east—at one mile, a stone eighteen by sixteen by ten inches in size, marked '1 M. Cor.' on side facing line run, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep.

"Thence south twenty degrees and thirty minutes west; at one mile and seventy-two chains, change course.

"Thence south twenty-six degrees west; at two miles, a stone thirteen by twelve by twelve inches in size, marked '2 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep, from which a pine fourteen inches in diameter bears south twenty-six degrees east, thirty-six links distant; at two miles and thirty-two chains, change course.

"Thence south thirty-two degrees and thirty minutes west;
138 at two miles and sixty chains, change course.

"Thence south forty-one degrees and thirty minutes west; at two miles seventy-eight chains and forty links, change course.

"Thence south thirty-one degrees and thirty minutes west; at three miles, a stone eighteen by sixteen by sixteen inches in size, marked '3 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep, from which a pine tree thirteen inches in diameter bears east, sixty-seven links distant, and a pine six inches

in diameter bears south thirty-seven degrees east, ninety-one links distant; at three miles thirty-eight chains and forty links, change course.

"Thence south eight degrees and thirty minutes west; at four miles, a stone eighteen by eighteen by sixteen inches in size, marked '4 M. Cor.' on side facing line run, with stone mound two and one-half feet high.

"Thence south twenty degrees west; at five miles, a stone eighteen by ten by six inches in size, marked '5 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at five miles and twenty chains, change course.

"Thence south nine degrees and thirty minutes west; at six miles, a stone eighteen by twelve by twelve inches in size,
139 marked '6 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at six miles and forty chains, a stake three and one-half feet long, four inches square, marked 'T. A.' on side facing grant.

"Thence south four degrees and fifteen minutes east; at seven miles, a stake three and one-half feet long, four inches square, marked '7 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at seven miles and sixty-four chains, change course.

"Thence south seventeen degrees and forty-five minutes east; at eight miles, a stone fifteen by twelve by ten inches in size, marked '8 M. Cor.' on side facing line run, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at nine miles, a stone sixteen by sixteen by four inches in size, marked '9 M. Cor.' on side facing line run, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep.

"Thence south seven degrees and thirty minutes east; at nine miles and seventy-eight chains, change course.

"Thence south twenty degrees west; at ten miles, a stone sixteen by twelve by ten inches in size, marked '10 M. Cor.' on side facing line run, with earth mound two and one-half feet high from
140 four pits eighteen by twenty-four by twelve inches deep; at ten miles and sixty chains, change course.

"Thence south seven degrees and fifteen minutes east; at eleven miles, a pine tree twenty-four inches in diameter, marked '11 M. Cor.' on side facing line run, from which a pine twenty-four inches in diameter bears south ten degrees west, thirty links distant, and a pine twenty-four inches in diameter bears south twelve degrees west, forty links distant.

"Thence south seven degrees and fifteen minutes west; at eleven miles and forty-three chains, change course.

"Thence south eleven degrees east; at eleven miles and sixty-four chains, change course.

"Thence south eight degrees and fifteen minutes; at twelve miles,

a post four inches square, three and one-half feet long, marked '12 M. Cor.' on side facing line run, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep, from which a pine tree fifteen inches in diameter bears south three degrees east, two hundred and fifty links distant; at thirteen miles, a stake four inches square, three and one half feet long, marked '13 M. Cor.' on side facing line run, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep, from which a pine tree twenty-four inches in diameter bears north twenty-seven degrees east, one hun-
141 dred links distant, and a pine twenty inches in diameter bears north, two hundred links distant.

"Thence south twenty-six degrees and thirty minutes west; at fourteen miles, a stone protruding nine inches above ground, thirty by thirty inches on top, marked '14 M. Cor.' on side facing line run, with stone mound two and one-half feet high.

"Thence south forty-one degrees and fifteen minutes west; at fourteen miles and fifty-four chains, change course.

"Thence south fifty-five degrees west; at fifteen miles, a pine tree thirty-six inches in diameter, marked '15 M. Cor.' on side facing line run, from which a pine twelve inches in diameter bears north forty-five degrees west, forty links distant, and a pine twelve inches in diameter bears south forty-five degrees west, fifty links distant.

"Thence south seventy-three degrees west; at sixteen miles, a stone twelve by twelve by eight inches in size, marked '16 M. Cor.' on facing grant, with stone mound two and one-half feet high, from which a clump of three pines bears north forty-five degrees west, two hundred and fifty links distant; at seventeen miles, a stone twenty by ten by eight inches in size, marked '17 M. Cor.' on side facing line run, with stone mound two and one-half feet high.

"Thence north eighty-two degrees and fifteen minutes west; at eighteen miles, a stone twelve by twelve by ten inches in size, marked '18 M. Cor.' on side facing line run, with stone mound
142 two and one-half feet high; at eighteen miles and twenty-one chains, change course.

"Thence north sixty-six degrees and thirty minutes west; at nineteen miles, a stone ten by ten by ten inches in size, marked '19 M. Cor.' on side facing line run, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep, from which a cottonwood tree thirty-six inches in diameter bears east, two hundred links distant.

"Thence north eighty-one degrees west; at twenty miles, a stone thirteen by twelve by ten inches in size, marked '20 M. Cor.' on side facing line run, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep.

"Thence north eighty-three degrees and thirty minutes west; at twenty miles and fifty-one chains, a stone twenty-four by twenty by twelve inches in size, marked $\frac{\text{N. W. Cor.}}{\text{T. A.}}$ on side facing grant, with stone mound three and one-half feet high, from which a pine tree

twenty-four inches in diameter bears north eighty-two degrees and fifteen minutes west, two hundred links distant, a pine thirty inches in diameter bears south sixty-seven degrees and thirty minutes west, one hundred and fifty links distant, and a pine thirty inches in diameter bears south seventy-nine degrees and forty-five minutes west, two hundred and fifty links distant, same being at a point on the Navajo river due north of the mouth of the Laguna
143 de las Caballos and being also the northwest corner of said Tierra Amarilla grant.

"Thence from the northwest corner of said grant, on a course due south—variation of needle, thirteen degrees and twenty-nine minutes east—at one mile, a stone seventeen by ten by ten inches in size, marked '1 M. Cor.' on side facing line run, with stone mound; at two miles, a stone twelve by ten by nine inches in size, marked '2 M. Cor.' on north side, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at three miles, a stone sixteen by sixteen by ten inches in size, marked '3 M. Cor.' on north side, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at three miles and eleven chains, intersection of boundary line between the State of Colorado and Territory of New Mexico at a point two miles and thirty-eight chains west of two hundred and sixth mile corner of boundary survey; at four miles, a stone thirty-six by twelve by twelve inches in size, marked '4 M. Cor.' on north side, with mound of stone two and one-half feet high; at five miles, a stone thirteen by twelve by ten inches in size, marked '5 M. Cor.' on north side, with stone mound two and one-half feet high; at six miles, a stone twelve by twelve by twelve inches in size, marked '6 M. Cor.' on north side, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep;
144 at seven miles, a stone twenty-four by fifteen by twelve inches in size, marked '7 M. Cor.' on north side, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at eight miles, a stone seventeen by thirteen by ten inches in size, marked '8 M. Cor.' on north side, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at nine miles, a stone thirty-one by twenty by sixteen inches in size, marked '9 M. Cor.' on north side, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at ten miles, a stone twenty-one by twelve by twelve inches in size, marked '10 M. Cor.' on north side, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at eleven miles, a stone thirty by sixteen by twelve inches in size, marked '11 M. Cor.' on north side, with stone mound two and one-half feet high; at twelve miles, a stone sixteen by thirteen by eight inches in size, marked '12 M. Cor.' on north side, with stone mound two and one-half feet high; at thirteen miles, a stone sixteen by ten by ten inches in size, marked '13 M. Cor.' on north side, with stone mound two and one-half feet high; at fourteen miles, a stone sixteen by twelve by nine inches in size, marked '14 M. Cor.' on north side,

with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at fifteen miles, a stone seventeen by ten by seven inches in size, marked '15 M. Cor.' on
145 north side, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at sixteen miles, a stone thirty-four by nine by four inches in size, marked '16 M. Cor.' on north side, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at seventeen miles, place for true corner falls in Laguna de los Caballos inaccessible; at seventeen miles six chains and ninety-two links, a stone eighteen by twelve by four inches in size, marked W. C. on north side, with stone mound two and one-half feet high, same being witness corner for place for seventeen-mile corner which falls in the lake; at seventeen miles twenty-eight chains and ninety-two links, the mouth of the Laguna de los Caballos, the western boundary call of said grant; at eighteen miles, a stone twenty-six by thirteen by ten inches in size, marked '18 M. Cor.' on north side, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at nineteen miles, a stone twenty by eleven by ten inches in size, marked '19 M. Cor.' on north side, with earth mound two and one-half feet high from four pits eighteen by twenty four by twelve inches deep; at twenty miles, a stone twenty-six by thirteen by four inches in size, marked '20 M. Cor.' on north side, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at twenty miles and twenty-nine chains, a large boulder, marked T. A. on north side; at twenty-
146 one miles, a stone thirty-one by twelve by twelve inches in size, marked '21 M. Cor.' on north side, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at twenty-two miles, a stone thirteen by twelve by ten inches in size, marked '22 M. Cor.' on north side, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at twenty-three miles, a stone twelve by ten by ten inches in size, marked '23 M. Cor.' on north side, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at twenty-four miles, a stone twelve by ten by ten inches in size, marked '24 M. Cor.' on north side, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at twenty-five miles, a stone ten by ten by ten inches in size, marked '25 M. Cor.' on north side, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at twenty-six miles, a stone thirty-three by fourteen by nine inches in size, marked '26 M. Cor.' on north side, with stone mound two and one-half feet high; at twenty-seven miles *miles*, a stone eighteen by eighteen by twelve inches in size, marked '27 M. Cor.' on north side, with stone mound two and one-half feet high; at twenty-eight miles, a stone thirty-six by twenty-four by *by* fifteen inches in size, marked '28 M. Cor.' on north side, with
147 earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at twenty-

nine miles, a stone thirty by twenty by sixteen inches in size, marked '29 M. Cor.' on north side, with stone mound two and one-half feet high; at thirty miles, a stone thirty-three by eighteen by eight inches in size, marked '30 M. Cor.' on north side, with mound of stone two and one-half feet high, from which a pine twelve inches in diameter bears east, thirty-six links distant, and a pine fourteen inches in diameter bears south forty-five degrees west, one hundred links distant; at thirty-one miles, a stone sixteen by sixteen by ten inches in size, marked '31 M. Cor.' on north side, with mound of stone two and one-half feet high; at thirty-two miles, a pine tree sixteen inches in diameter, marked '32 M. Cor.' on north side, from which a pine twelve inches in diameter bears north forty-three degrees west, one hundred and sixteen links distant, and a pine six inches in diameter bears south twenty-seven degrees west, ninety-six links distant; at thirty-three miles, a stone twelve by twelve by eight inches in size, marked '33 M. Cor.' on north side, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at thirty-three miles and seventeen chains, a stone thirty by eighteen by eighteen inches in size, marked $\frac{\text{S. W. Cor.}}{\text{T. A.}}$ on side facing grant, with mound of stone four feet high, same being the southwest corner of said Tierra Amarilla grant, from which corner a pine twenty-four inches in diam-
148 eter bears south ten degrees west, one hundred links distant, a pine twelve inches in diameter bears south twenty degrees east, two hundred links distant, a pine twenty inches in diameter bears south sixty-five degrees east, two hundred links distant, point of bluff bears north forty degrees west, about twenty chains distant, south end of prominent mesa bears north fifty-three degrees east, about three-fourths of a mile distant.

"Thence from said southwest corner on a course east—variation of needle, thirteen degrees and thirty-three minutes east—at one mile, a post three and one half feet long, three by four inches in size, marked '1 N. Cor.' on west side, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at two miles, a post three by four inches by three feet in size, marked '2 M. Cor.' on west side, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at three miles, a stake three feet by three by four inches in size, marked '3 M. Cor.' on west side, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at four miles, a stone fifteen by seven by seven inches in size, marked '4 M. Cor.' on west side, with earth mound two and one-half feet high from four pits eighteen by
149 twenty-four by twelve inches deep, from which a pine eight inches in diameter bears south forty-five degrees west, two hundred links distant, and a pine fifteen inches in diameter bears west, fifteen links distant; at five miles, a stone four by three by two feet in size, marked '5 M. Cor.' on west side, with stone mound three feet high; at five miles and thirty-one chains, Rio Chama and opposite mouth of Nutrias river; at five miles and thirty-two chains,

Nutrias river; thence on meander up the right bank of said Nutrias river, on a course north seventy-three degrees and fifteen minutes east—variation of needle thirteen degrees east—at six miles from southwest corner of said grant, a stone thirty-three by thirteen by ten inches in size, marked '6 M. Cor.' on west side, with stone mound two and one-half feet high; at six miles eleven chains and thirty links, change course.

"Thence north eighty-eight degrees and thirty minutes east; at six miles thirty-five chains and thirty links, change course.

"Thence north seventy-seven degrees and thirty minutes east; at six miles and seventy-two chains, change course.

"Thence north forty-five degrees and forty-five minutes east; at seven miles, a stone sixteen by twelve by ten inches in size, marked '7 M. Cor.' on west side, with stone mound two and one-half feet high; at seven miles sixty-four chains and thirty links, change course.

150 "Thence north eighty-six degrees east; at eight miles, a stone eighteen by twelve by ten inches in size, marked '8 M. Cor.' on west side, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at nine miles, a stone seventeen by ten by ten inches in size, marked '9 M. Cor.' on west side, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep.

"Thence north eighty-eight degrees east; at nine miles and forty chains, change course.

"Thence north eighty-four degrees east: at ten miles, a stone eighteen by twelve by ten inches in size, marked '10 M. Cor.' on west side, with mound of earth two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at ten miles six chains and sixty links, change course.

"Thence north fifty-one degrees and thirty minutes east; at ten miles and seventy-six chains, change course.

"Thence south seventy degrees east; at eleven miles, a stone twelve by twelve by eight inches in size, marked '11 M. Cor.' on side facing line run, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at twelve miles, a stake three feet by three by four inches in size, marked '12 M. Cor.' on side facing line run, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep.

151 "Thence south sixty-two degrees east; at twelve miles sixty-four chains and sixty links, change course.

"Thence south eighty-eight degrees and ten minutes east; at thirteen miles, a stone twenty-one by eighteen by four inches in size, marked '13 M. Cor.' on side facing line run, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at thirteen miles and forty-eight chains, change course.

"Thence north seventy-six degrees and thirty minutes east; at fourteen miles, a stone twenty by twelve by three inches in size, marked '14 M. Cor.' on side facing line run, with earth mound two

and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at fourteen miles thirty-four chains and fifty links, change course.

"Thence north sixty-two degrees and forty-five minutes east; at fifteen miles, a stone thirteen by ten by ten inches in size, marked '15 M. Cor.' on side facing line run, with earth mound two and one-half feet high from four pits eighteen by twenty-four by twelve inches deep; at fifteen miles and forty-nine chains, change course.

"Thence south seventy-two degrees east; at fifteen miles and fifty-eight chains, the place of beginning of the survey of said Tierra Amarilla grant and containing five hundred and ninety-four
152 thousand five hundred and fifteen and fifty-five-hundredths acres, according to the survey thereof.

"In witness whereof I have hereunto signed my name officially, at my office, in the city of Santa Fé and Territory of New Mexico, this twentieth day of April, eighteen hundred and seventy-seven.

"HENRY M. ATKINSON,
"*United States Surveyor General for New Mexico.*"

Now know ye that the United States of America, in consideration of the premises and pursuant to the provisions of the second section of the act of Congress of third March, A. D. one thousand eight hundred and sixty-nine, entitled "An act to confirm certain private land claims in the Territory of New Mexico," have given and granted, and by these presents do give and grant, unto the said Francisco Martinez, his heirs and assigns, the tract of land embraced and described in the foregoing survey, but with the stipulation that in virtue of the provisions of the fourth section of the said act of June twenty-first, A. D. one thousand eight hundred and sixty, this patent shall only be construed as a quitclaim or relinquishment on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever.

To have and to hold the said tract, with the appurtenances,
153 unto the said Francisco Martinez, his heirs and assigns forever, with the stipulation aforesaid.

In testimony whereof I, Rutherford B. Hayes, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this twenty-first day of February, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and fifth.

Seal United States General Land Office.

By the President:

R. B. HAYES.
By WM. H. CROOK, *Secretary.*

Recorded, vol. 17, pp. 162 to 186, inclusive.

S. W. CLARK,
Recorder of the General Land Office.

(Here follows map marked p. 154.)

155 CLAIMANTS' EXHIBIT "Q."

Muniments of Title in the Petaca Grant, No. 99.

Sello Tercero (seal) Dos Reales.

Para los Anos de Mil Ochocientos treinta y seis y ochocientos treinta y siete.

Respto. Ayuntamiento:

Jose Julian Martines, Vecino de esta jurisdicion ante V. S. y en union de mi Padre Antonio Martines, Franco. Anto. Atencio, y hijos del ultimo: con la sumision qe. correspe. y bajo las protestas mas legales representamos disiendo: Que siendo nuestra intension girar por la recomendable ocupacion de la agricultura para de este modo auciliar a la sostencion de nuestras familias y satisfechas que Rio Arriba de esta jurisdn. esta un terreno baldio, el cual se llaman la Petaca: Suplicamos a V. S. q. en caso que no haya perjuicio de tercero ni reconosca propiedad en dhos. terreno ningun indibiduo se sirva V. S. hacer las indagaciones q. a bien tenga y informara la E diputacion Probincial lo q. crea conbeniente en el particular anexo a nuestra solicitude que es gracia q. impetramos &a.

Ojo Caliente, Enro 29 de 1836.

JOSE JULIAN MARTINES. [RUBRICA.]

El rrespectable ayuntamto. qe. tengo el onor de precidir en çonsequencia de que los contenidos en la merced qe. acompana a la precentacion que antesede no an cultivado ni puesto clase alguna de industria en el terreno que se les dio y que aora nuebamente se solicita en el largo tiempo de 12 anos corrientes opina que a los nuebos solicitantes se le debe conseder en birtud de que a aqueyos por la causa espresada han perdido el dro. con que se les agracio bajo las condiciones que en dha. Merced se espresan: adbirtiendo que tanvien cree este ayuntamto. que los hijos de franco. Anto Atencio no deben entraren parte de la rreferida posecion por
156 quanto son menores de edad, sujetos a la patria potestad y sin el conocimiento nesesario pa. permitir ni dar poder pa. que en su nombre se pida lo que eyos no estan en estado de adquirir por esta via.

La Exma Diputacion dispondra lo que sea mas arreglado a las leyes.

Ojo Caliente Febrero 22 de 1836.

JOSE ANTO. MARTINES. [RUBRICA.]

JOSE JULIAN MARTINES, *Srio.* [RUBRICA.]

SANTA FÉ *Febrero* 25 *de* 1836.

Visto el acuerdo del Ayuntamto. del Ojo Caliente fha. 22 del corriente, en q. dice no haver obice para q. al impetrante y socios se les done el terreno q. secita, (el) mismo a q. no tienen ya dro. los anteriormente mercenados en el por haverlo abandonado: el alcalde

del citado punto pondra en posecion a los q. ahora lo pretenden, vaho la formula requerida, y con arreglo a la ley de la materia estendiendo la donacion gral. en q. presisamente deve constar los linderos de dha. posecion y sin perjuicio de tercero, ciniendo egualmente a los agraciados a las obligaciones prescriptas por las leyes para adquirir dro.: A cuyo fin el Alcalde recogera el documento gral. del reparto q. sera para el archivo, y de este dara los testimonios q. le pidieran previos sus dros. correspondientes.

PERES. [RUBRICA.]

Sello cuarto (seal) Una cuartilla.

157 Para los anos de mil ochocientos Treinta y seis y ochocientos Treinta y siete.

En santa Cruz del Ojo Caliente jurisdicion de este nombre a los veinte cinco dias del mes de Marzo de mil ochocientos treinta y seis: En cumplimiento del decreto del Sor. Gefe politico y Militar de este Teritorio de No. Mexico Dn. Albino Perez fecha 25 de febrero del mismo ano en que me ordeno poner en pocecion a los impetrantes qe. solicitan el terreno de la Petaca y segun consta por su presentacion de 29 de Enero del mismo ano pase y reparti dho terreno con presencia de los interesados dandole a cada Uno de losque constan en la lista de a ciento y cincuenta Varas a linia recta dandoles los linderos por el sur la puerta del canoncito y tierras de Jose Miguel Lucero por el Norte la loma qe comunmente llaman de tio Ortiz, y por el oriente l axxollo de las aguajes a Petaca, por el poniente hasta donde sujeta la merced del Vallecito en cuyo ambito se Colocaron los nuevamente mersenados solo ci destos le done al C Felipe Jaques desde el lindero de benito Martin hasta el lindero de Eusebio Chavez por ser una angostura de poca utilidad en seguida al C. Manuel Lujan dos anconcitos cin medir continuá a la rreparticion para el canoncito ya citado y le done al C. Mariano Peña dos anconcitos muy estrechos sin variar prosegui y done en el mismo canoncito al C. Anto. Eusebio Ortiz *Ortiz* un anconcito tambien sin bariar ciguiendo la misma rruta por el mismo canoncito le done al C. Jose Franco. Lucero hun anconcito tambien cin bariar y al C. Jose Anto. Lucero otro anconcito y ciendo el lindero por el sur deste ultimo la boca del mismo canoncito dejandoles para plaza ciento y cincuenta varas y para huertas las mujeres cincuenta y cincuenta para entradas y salidas quedando por havrebadero comun en la puerta de canada de la dorada ciento y cincuenta varas a linia
rrecta cuya donacion hise en Nonbre de la Soberania Nacional
158 con areglo a la ley de la materia quedando entendidos los Mercenados que constan en la adjunta lista qe los pastos, montes, aguas y avrevaderos son comunes haciendoles ber qe el qe no ocupare y cultivare el terreno que se le agracio dentro del termino de cinco anos para adquirir el dro. no podra vender, trocar, ni enajenar ni ser admitido en nueva poblacion y ci por si abandonare el citio queda advertido de no tener (dkhe) dor por demandarlo aci la ley y entendidos y convenidos de todo esto rrecibieron

la rrecivida posecion en cuya birtud arrancaron yerbas pegaron brincos tiraron piedras y dieron voses de alegria diciendo Viva Dios y Viva la Nacion y viva el Soberano Congreso y la ley qe nos rrije que nos ampara y otras voses de rregocijo en culla virtud tomaron la posecion y para qe en todo tiempo conste por este decreto firme la presente Merced y donacion con cuanta facultad tubo a bien Su Senoria darme para el efecto de la reparticion segun consta por el decreto ya citado el qe queda adjunto en la presente Merced ciendo testigos los C. C. Jesus Ma. Barela y Jose Franco. Lucero segun lo echo por conbeniente.

JOSE ANTO. MARTINES. [RUBRICA.]

JESUS MA. BARELA. [RUBRICA.]

Pr. da.—A Juan de Jesus Xaques se le dio del lindero de Jose Grabiel Begil has un pinabete que esta alnorte. Bale.

[RUBRICA.]

159 *Translation of Claimants' Exhibit "Q," Muniments of Title in the Petaca Grant, No. 99.*

Seal third. (Seal.) Two reals.

For the years one thousand eight hundred and thirty-six and eight hundred and thirty-seven.

Respectable ayuntamiento:

I, Jose Julian Martinez resident of this jurisdiction appear before your honor and together with my father Antonio Martinez, Francisco Antonio Atencio, and the sons of the latter, with all submission and under the most legal protestations, represent and state:

That it being our intention to engage in recommendable occupation of agriculture, so as by this mode to aid in the support of our families, and being satisfied that up the river from this jurisdiction there is a tract of public land which is called the Petaca, we therefore, pray your honor, that in case no injury would result to any third party and you know of no individual owning said land, which your honorable body will please ascertain, and inform the illustrious provincial deputation whatever you may deem proper in respect to our application, which is a favor we solicit &c.

Ojo Caliente, January 29th, 1836.

JOSE JULIAN MARTINEZ.

The respectable ayuntamiento over which I have the honor to preside, inasmuch as that the parties in the grant accompa-
160 nying the foregoing petition have not cultivated nor placed any kind of improvements on the land which was given them in the long period of full 12 years, and which is now again applied for, are of opinion, that the same should be granted to the new applicants for the reason that the former have forfeited the right granted them, for the cause stated, and under the conditions expressed in said grant; observing that this ayuntamiento, also believes that the children of Francisco Antonio Atencio, should not

become a party in the said possession as they are minors subject to paternal control, and do not possess the knowledge necessary to empower or give authority to petition in their name for that which they are not in a condition to acquire in this manner.

The most excellent deputation will direct as may be most in accordance with the laws.

Ojo Caliente, February 22nd, 1836.

JOSÉ ANTONIO MARTINEZ.

JOSÉ JULIAN MARTINEZ, *Secretary.*

SANTA FÉ, *February* 25, 1836.

Having seen the action of the ayuntamiento of Ojo Caliente of date 22nd instant in which they say there is no objection to granting the applicant and his associates the land mentioned, the former grantees not possessing now any right therein, they having abandoned the same; the alcalde of said place, will place those who now apply for the same in possession thereof, in the required form and in conformity with the law on the subject, setting forth the
161 general donation, in which shall necessarily be stated the boundaries of said possession, and without prejudice to any third party, also binding the grantees to the obligations prescribed by the laws to acquire title for which purpose the alcalde shall take charge of the general document of distribution, which shall be for the archives, and he shall give testimonios therefrom as may be requested of him on payment of his corresponding fees.

PEREZ.

Seal fourth. (Seal.) One cuartilla.

For the years one thousand eight hundred and thirty-six and eight hundred and thirty-seven.

At Santa Cruz del Ojo Caliente jurisdiction of this name on the twenty-fifth day of the month of March, one thousand eight hundred and thirty-six, in compliance with the decree of the civil and military governor of the Territory of New Mexico, Alvino Perez, of date February 25th of the same year in which he directs me to place in possession the petitioners who have applied for the Petaca tract of land, and as is set forth in their petition of date 29th of January of the same year, I proceeded to distribute said land in the presence of the parties interested giving to each one of those mentioned in the list one hundred and fifty varas in a direct line, designating to them as their boundaries, on the south the entrance to the Canoncito, and lands of Jose Miguel Lucero, on the north the hill commonly called the Tio Ortiz hill, on the east the creek of
162 the Aguaje of the Petaca and on the west the boundary of the Vallicito grant, within which limits the said new grantees were located, of these I donated only to citizen Felipe Jaquez from the boundary of Vicente Martin to that of Eusebio Chaves, the land being a narrow strip and of little utility; thereupon I donated to citizen Manuel Lujan two small valleys which were not measured

with the line, and reach to the distribution of the said canoncito and I donated to citizen Mariano Pena, two small valleys very narrow, without varying, and continuing I donated to citizen Antonio Eluterrio Ortiz, in the same canoncito, a small valley, also without varying following the same course in the said canoncito, I donated to citizen Jose Francisco Lucero, a small valley also without varying; and to Jose Antonio Lucero another small valley, the boundary thereof being on the south, the mouth of the same canoncito, leaving them for a plaza one hundred and fifty varas, and fifty for women's gardens, and fifty for ingress and egress, there remaining at the mouth of the Canada de la Dorada, for common watering places, one hundred and fifty varas in a direct line.

Which donation I made in the name of the national sovereignty in conformity with the law on the subject; the grantees mentioned in the annexed list understanding that the pastures, forests, waters, and watering places, are in common, and they were further informed that he who fails to occupy and cultivate the land granted, within the term of five years, in order to acquire title, the same cannot be by him sold, exchanged nor alienated, nor will he be admitted in a new settlement and if any should of their own accord abandon the tract, they remain informed further, that they possess no right; such being the requirements of law, and being informed of
163 and agreeing to all this, they received the accepted possession.

In virtue of which they plucked up herbs, leaped, cast stones and shouted with joy, saying God be praised. Long live the nation. Long live the sovereign Congress and the law that governs and protects us and other manifestations of pleasure by virtue of which they took possession.

And that it may so appear at all times, I under this decree sign this grant and donation, with all the authority his excellency was pleased to confer upon me, for the purpose set forth in the above petition and expressed in said decree attached to the present grant.

The witnesses being the citizens Jesus Maria Barela and Jose Francis Lucero, as properly made.

JOSE ANTONIO MARTINEZ.
JESUS MARIA BARELA.

P. S.—There was given to Juan de Jesus Jaquez, from the boundary of Jose Grabiel Vigil, to a pinobete on the north. Valid.

[RUBRIC.]

164 U. S. SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO, *May* 12, 1886.

In the Matter of the Private Land Claim Known as the Grant to JOSÉ R. ZAMORA *et al.* for the Vallecito de Lovato Tract.

File No., 182; reported No., 108.

On May 20, 1875, a petition was filed in this office by persons designating themselves as the "inhabitants of the town of Vallecito, in Rio Arriba county," without mentioning the name of any one.

The petitioners requested the investigation of the title to certain land situate on the Ojo Caliente river, in the county named. After an investigation, Surveyor General Proudfit, on October 13, 1875, made his report, recommending the confirmation of the claim, and it is now pending before Congress for final action. Under instructions from the Commissioner of the General Land Office of December 11, 1885, the case is before me for re-examination and supplementary report.

As proof of their claim, the petitioners presented three papers in Spanish, which seem to have constituted a portion of the archives received by the United States from the Mexican government. It may be remarked that no evidence is known to exist showing what particular documents were properly placed in such archives, and presumptions arising from the mere fact that a paper was
165 found among them are therefore not of the most conclusive character.

The first of these documents purports to be a petition presented by José Rafael Samora, on behalf of himself and twenty-five other persons, whose names were not stated, to Francisco Trujillo, as the constitutional alcalde of Abiquiu, on the 23d day of February, 1824, in which it was stated "that there being sufficient land in the Vallecito of Lovato to give us in possession, we now ask that in the goodness of your hearts you grant us the same, for we have not any place wherein to plant grain for harvesting."

No further description of the land was given. Appended to the petition is the following:

"I do hereby certify that the above is true, and the land applied for public, and I do not recognize those applying for the same as property-holders.

"FRANCISCO TRUJILLO."

Another paper, called by the claimants the granting decree, is six by eight inches in size of unstamped paper, some portions having been stricken out, and a portion of the writing being on the margin. It has a very unofficial appearance, and is not signed by any one. The document in full is as follows:

"The land applied — by José Rafael Samora, together with the twenty-five accompanying individuals in his petition, in
166 virtue of your report, you may proceed to place them in possession, in order that they may not lose time in their labor, until the necessary formalities can be had which cannot be verified at this time, the excellent deputation not being in session, to whom the matter pertains. I charge you to treat these unfortunate persons with consideration on placing them in possession, charging for your labor according to their wants and not more than the fee bill allows.

"God and liberty.

"Feb'y 27, 1824.

"To the alcalde of Abiquiu."

The other paper is what purports to be the certificate of the alcalde, accompanied by a list of persons, with the amount of land assigned to each. The certificate recites that by virtue of the decree of Bartolomé Baca, political chief of the province, dated February 27, 1824, the said alcalde on the 22nd of September, 1824, delivered to the parties interested certain lands on the Ojo Caliente river, called the Vallecito de Lovato, up the river from the town or settlement of Ojo Caliente, the boundaries of the land being as follows: "On the east the mesa of the Jarita, on the west the cuchilla called del Valle de los Caballos, on the north the source of the said river, and on the south the Badito, where the grant joins Juan Galbis." Said statement also says, "having to present this document to the po-
167 litical chief in order that he may approve reform or determine that which he may deem proper."

This does not appear to have been done.

It seems hardly necessary to take time or space to show that a grant was never made in this case. The papers show the fact so plainly that nothing can be said to make it more apparent.

Mr. Proudfit in his report summarily disposes of the matter thus: "Although the granting decree submitted is not signed, yet the alcalde asserts that it was made by the acting political chief, Bartolomé Baca, and I have no doubt of the good faith of the people of the community both now and in the past."

No evidence was produced showing that the paper called the "granting decree" was in the handwriting of the political chief, or that of any of his clerks or secretaries, nor was it shown that the papers purporting to be executed by the alcalde are genuine, and it may be stated that the two signatures purporting to be those of that officer are quite dissimular.

It would be strange doctrine, indeed, to announce that the mere statement found in an unauthenticated paper, purporting to be executed by an inferior officer, should be sufficient evidence of the granting of a large body of land. Such evidence would not even be offered to a reputable court.

If the paper had been signed by the governor or any officer
168 possessing power to make concessions of public lands, it would confer no title, as no words of conveyance are contained in it. Possession only was pretended to be given by it, and the question of title reserved for the excellent deputation.

It may be claimed that as the evidence shows there was a settlement on the land at the time the United States authorities took possession of the Territory, this is sufficient proof of a grant under the instructions issued by the Interior Department for the government of this office. I am not of this opinion. The instructions referred to contain these provisions:

"And the fact being proved to you of the existence of such city, town, or village at the period when the United States took possession may be considered by you as *prima facie* evidence of a grant to such corporation or to the individuals under whom the lot-holders claim, and where any city, town, or village shall be in existence at the passage of the act of 22d of July, 1854, the claims for the land

embraced within the limits of the same may be made and proved up before you by the corporate authority of the said city, town, or village."

It is quite evident that the cities, towns, and villages referred to in these instructions are those and those only that were recognized as such by the Spanish and Mexican governments, and to which were granted rights and privileges as cities, towns, and villages. It
is well known that in all settled portions of the Territory prior
169 to its cession to the United States the people were required
to and did live in towns or compact settlements for the purpose of affording protection to each other against the marauding Indians, and it is not to be supposed that the instructions referred to apply to such settlements.

It may be stated that by reference to the papers in the Petaca or José Julian Martinez grant—reported number, 105—it will be seen that the alcalde, in fixing the boundaries of that grant in 1836, mentioned the Vallecito grant as being the western boundary, which is a circumstance tending to show the existence at that date of a claim to the land by the occupants. It shows nothing more.

In the petition of claimants in this office it is stated that the tract claimed embraces about thirty thousand acres.

A witness examined before the surveyor general stated the tract was about fifteen miles long by seven miles wide, embracing 105 square miles, or 67,200 acres, while the claim, as surveyed, includes 114,400.54 acres.

I am of the opinion that the claimants have failed to establish any title, either legal or equitable. There is certainly no grant, nor is there any evidence which can be considered at all trustworthy that any delivery of possession of the land was ever made. The genuineness of the paper showing the authority of the alcalde to
make such delivery is not proven, and is more than doubtful.
170 For aught that is shown, the parties who took possession of
it may have been trespassers, and, if so, no title by prescription could be asserted by them.

None of the present claimants are named, and the case before me, therefore, is that of parties unknown asserting title to a large body of land under a grant the existence of which is not proved and with no other claim than that parties whose names are not given are in possession of the land, and that some of them are shown to have been in possession a few years prior to the acquisition of New Mexico in 1848. I am not authorized, on such a showing as this, to presume that a grant was made. It devolves upon the claimants to show this by such affirmative proofs as will legally establish it. This case comes within the well-settled rule of law that what is not granted expressly or necessarily implied is withheld. All such grants are to be construed strictly against the grants, and if doubts arise they are to be disposed of in the interest of the Government. These principles are as applicable to Mexico as to the United States, and if the colonization law of 1824, which illustrates this fact, was not in force at the date of this alleged grant, it became a law the same year, and shows how vigilantly the gov-

ernment of Mexico protected itself against spurious and
171 fraudulent grants. I therefore recommend the rejection of this claim by Congress. Copies in triplicate of this opinion are forwarded as required.

GEORGE W. JULIAN,
Surveyor General.

172 And be it further remembered that thereafter, to wit, on October 5th, 1897, the court rendered its decision in the words and figures following, to wit:

Decree.

MEREJILDA MARTINEZ ET AL.
vs.
UNITED STATES. } No. 142.

S. ENDICOTT PEABODY
vs.
UNITED STATES. } No. 204.

JOSE SALAZAR Y ORTIZ
vs.
UNITED STATES. } No. 236.

The above-entitled causes having been heretofore, to wit, on September 5, 1896, consolidated for purposes of trial, and the same having been this day tried and submitted and taken under advisement by the court upon full legal proof and hearing, and the court, being now sufficiently advised in the premises, doth find that the petition for the confirmation of the private land claim commonly known as and called the Vallecito de Lobato grant, being number 108, and reported by the surveyor general to Congress, and situate in the county of Rio Arriba, Territory of New Mexico, has not been sustained by satisfactory proof, and that the title so asserted to the tract of land alleged to have been petitioned for on February
173 23, 1824, to the governor and political chief of New Mexico by Jose Rafael Samora, in behalf of himself and twenty-five others, and which is alleged to have been on February 27, 1824, by Bartolome Baca, said governor and political chief, granted to said parties, and juridical possession of which is alleged to have been given on September 22, 1824, has not been sustained by satisfactory proof, and that the title so asserted to said tract of land bounded and described as follows, to wit, on the north by the source of the Ojo Caliente river, on the east by the table-land of the Jara or Jarita, on the south by the point on said river known as the Little ford, and on the west by the mountain ridge known as the Horse Valley ridge, and containing 114,400 acres, more or less, is of no validity and the said grant or concession so claimed is not such an one as the United States are bound to recognize and confirm by virtue of the treaties of cession by Mexico to the United States, by

the laws of nations, or by the laws and ordinances of Spain or Mexico.

It is therefore ordered, adjudged, and decreed that the said claims to the said tract of land be, and the same are hereby, rejected and said petitions dismissed.

174 UNITED STATES OF AMERICA, *ss:*

Court of Private Land Claims, Santa Fé District.

S. ENDICOTT PEABODY, Plaintiff,
vs.
UNITED STATES, Defendant. } No. 204. Vallecito Grant.

The above-named plaintiff, S. Endicott Peabody, considering himself aggrieved by the decree entered on the 5th day of October, A. D. 1897, in the above-entitled proceeding, doth hereby appeal from said decree to the Supreme Court of the United States, and he prays that this appeal be allowed, and that a transcript of the record and proceeding and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

FRANK W. CLANCY,
Attorney for Plaintiff.

It is ordered that an appeal be, and hereby is, allowed as prayed for.

JOSEPH R. REED,
Chief Justice.

175 *Citation on Appeal to Supreme Court.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the court of private land claims, wherein S. Endicott Peabody is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this fourth day of February, in the year of our Lord one thousand eight hundred and ninety-eight.

JOSEPH R. REED,
Chief Justice Court of Private Land Claims.

I hereby acknowledge service of the foregoing citation for and on behalf of the United States of America this fourth day of February, 1898.

MATT. G. REYNOLDS,
Attorney for Appellee.

[Endorsed:] 204. F. 10. S. Endicott Peabody *vs.* United States. Citation on appeal. Filed February 4th, 1898. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

176 UNITED STATES OF AMERICA, }
Territory of New Mexico. }

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing 175 pages contain a full, true, and perfect transcript of all the papers, pleadings, record entries of proceedings, and evidence in the cause lately pending in said court wherein Merejilda Martinez *et al.*, S. Endicott Peabody, and Jose Salazar y Ortiz were petitioners and The United States were defendants, except archives Nos. 387 and 1189, which are to be transmitted as a part of this record to the clerk of the Supreme Court of the United States at some time prior to the hearing of said appeal; and I further certify that this transcript, together with said archives so to be transmitted, constitute a full, true, and perfect record of the said cause, as shown by the records and files of my office.

Witness my hand and the seal of said court, at Santa Fé, New Mexico, this 12th day of March, A. D. 1898.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES, *Deputy*.

Endorsed on cover: Case No. 16,832. Court of private land claims. Term No., 268. S. Endicott Peabody, appellant, *vs.* The United States. Filed March 28th, 1898.

SUPREME COURT

—OF THE—

UNITED STATES.

OCTOBER TERM, 1898.

No. 268.

S. ENDICOTT PEABODY,
vs.
UNITED STATES.

Appeal from Court of Private Land Claims.

STATEMENT OF FACTS.

In this case there are no disputed questions of fact to be considered. A small amount of evidence was taken on behalf of the government which might indicate some controversy as to the location on the earth's surface of the natural objects which are the boundaries of the grant claimed; but, as the court below never passed on this question, and as it will be proper to remand the case for further proceedings if the decree of that court be vacated, that question is not necessarily before the court for examination at this time. The court of private land claims held in effect that there was no grant, or rather that there was no satisfactory evidence of any grant, but it is not clear from the record whether the adverse decree was based upon a

supposed failure to prove the actual making of the grant, or upon a supposed lack of power in the authorities by which it was made.

The Spanish papers put in evidence by appellant to show the making of the grant, are three in number, although, as printed in the record at pages 38 to 40, they appear to be but one single document.

The first paper contains a petition dated February 23, 1824, addressed to the constitutional alcalde of Abiquiu, Don Francisco Trujillo, signed by Jose Rafael Samora, asking for himself and 25 others, residents of the district of Ojo Caliente, a grant of land in the Vallecito de Lovato. This petition bears the appearance of being an original paper. On the same paper following the petition is a short certificate signed with the name Francisco Trujillo and dated February 24, 1824, setting out that the petitioners own no property. The testimony of Mr. William Tipton, an expert as to such papers and handwriting, at page 38 of the record seems to indicate that this certificate may not have been signed by the alcalde himself. However that may be, the act of juridical possession, to which reference will be hereafter made, is shown by the testimony of the same witness undoubtedly to have been executed by the alcalde, and it is upon that paper that reliance is placed as evidence of the making of the grant.

The next paper put in evidence is evidently a first draft or retained copy of an order by the governor, and is not signed. This appears at the top of page 39 in Spanish and on pages 41-2 of the record, in English. An examination of the original paper, which counsel for appellant hopes to have before the court when this case is argued, will show that in two places words have been stricken out and in one place an interlineation has been made, which facts strongly indicate that this was a rough draft of the order which was afterwards made. In official Spanish documents

interlineations and erasures are very seldom found, and must be regarded as unauthorized interpolations or changes unless attention is called to them in some way by the officer signing the document, but it is not uncommon to find in the archives such drafts of papers as this now under consideration. The last paragraph of this document in which the governor charges the alcalde to treat the unfortunate petitioners with charity and to charge them for his work according to their poverty rather than according to the existing fee-bill, is written on the margin of the paper.

The third paper is the act of juridical possession executed by Francisco Trujillo which recites that he acted under the authority of an order of Don Bartolome Baca, political chief of the province, given at Santa Fe on the 27th day of February, 1824, upon the petition presented by Jose Rafael Samora and his associates. Whatever may have become of the order finally signed by the governor, and whether it was actually the same as the rough draft referred to, can not be considered as important, as the official act of the alcalde recites the making of the order, and all three of these papers come from the official archives which were turned over to our government by the Mexican authorities, and have been in the office of the Surveyor General of New Mexico, certainly ever since that office was organized in 1855.

The facts as to repeated spoliations of the official archives at Santa Fe, both under the Mexican and American governments, have been so frequently presented to the court of private land claims and as well to this court, that judicial notice thereof may be taken. The genuineness of the act of possession is clearly proved, however, by the testimony of Mr. Tipton at pages 35-6 of the printed record, where he testifies that none of the documents in the archives have ever been questioned as to genuineness, and that the signature to the act of possession is the same as that on archives

numbered 387 and 1189 which appear to be official reports of the alcalde, Trujillo, both made in 1824. It is expected that these papers will also be before the court for examination.

By the act of possession it appears that the alcalde measured off land to each of the grantees, giving no names except Samora's, fifty varas to some, 100 varas to others and 125 varas to Samora, as principal petitioner, with which they were satisfied, leaving free, from the little ford and cuestecita (small hill) as it is called, for a public watering place, and the middle of the little canon as far as the lands which are called those of Juan Benito Sanchez, leaving 150 varas for the plaza, the said land being included within certain boundaries which are natural objects, specifically named. It is not shown when the possession was delivered, but presumably it was shortly after the order was made. The act of possession is dated the 22d of September, 1824, at Abiquiu, which is many miles from the Vallecito.

There was also put in evidence, but not by this appellant, another paper which purports to be a list of the persons who comprised this grant of the Vallecito; but this paper is not dated, certified or identified in any way, nor does it by any internal evidence appear to be connected with the other papers. This will be apparent from its mere inspection. It is possibly a list, made at a much later date, of people living in the Vallecito, but when, by whom or for what purpose, does not appear. The alcalde in the act of possession certifies that he measured off 50 or 100 varas of land to different persons while this list seems to indicate the possession by different people of much larger amounts of land. It was clearly not made by the alcalde or under his direction.

It was shown by evidence that the people put in possession in 1824, and their descendants and successors in title, have remained in possession down to the pres–

ent time, claiming the land within the boundaries set out in the act of possession, with the possible exception of a short interval about the year 1844, when they were temporarily driven away by Indians.

A number of deeds were introduced in evidence, the earliest being in 1830, which show at least continued assertion by different persons of ownership of land under the grant. Reference to those deeds will show that they specifically declare that the land was held by royal possession as appears by the grant ("como costa por la merced"), and in in some of them the boundaries given refer to the grant, setting out that the land sold is bounded on the east or the west by the limits of the grant. The language used in the deeds also show an intention to convey something more than the mere pieces of land described as they in terms convey the "*fuero, domicilio y vecindad.*" An examination of the meaning of these terms, especially of the word *fuero*, will show the evident intent of the grantor to convey rights beyond and outside of the strip of land described. This distinction was well understood under the former governments, no such language being used in cases where the intention was to convey only a piece of land without other right or title.

There were also put in evidence the Spanish papers showing the making of the Petaca grant in 1836, twelve years after the Vallecito grant was made, in which the existence of the earlier grant is recognized by the act of possession executed by the alcalde thereunto authorized by the governor, the Vallecito grant being given as the western boundary of the Petaca.

It will be apparent from the foregoing statement that the claimants must rely principally upon the undoubted act of juridical possession for evidence of the making of the grant by the governor. The familiar doctrine of presumption in favor of the regularity of official acts is undoubtedly applicable.

There were three cases filed in the court of private land claims to obtain the confirmation of this grant. The first of these was by Merejildo Martinez and a number of others, claiming to be the heirs at law and legal representatives of Jose Rafael Samora and his associates; the second was filed by the present appellant claiming to be the successor in interest of Jose Rafael Samora and praying for a confirmation to the legal representatives of Samora and his associates; and the third by Antonio Trujillo and another, claiming to be the owners of an interest in the tract of land by purchase from the heirs of three grantees, and praying for a confirmation to the petitioners as the legal representatives of the original grantees. These three cases were consolidated in the court of private land claims for the purposes of trial, which trial resulted in the decree which appears at page 98 of the printed record. From this decree the present appellant alone took an appeal.

The appellant makes the following assignment of errors:

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 268.

S. ENDICOTT PEABODY, vs. UNITED STATES. — *Appeal from Court of Private Land Claims.*

ASSIGNMENT OF ERRORS.

Now comes the said appellant by his solicitor and says to the court that there is manifest error in the record and decree of this cause, and specifies the following as errors therein:

First: The court below erred in holding that the petition had not been sustained by satisfactory proof.

Second: The court below erred in holding that the title asserted in the court below had not been sustained by satisfactory proof.

Third: The court below erred in holding that the title asserted to the tract of land described in the petition, was of no validity.

Fourth: The court below erred in holding that the grant or possession claimed was not such a one as the United States are bound to recognize and confirm.

Wherefore appellant prays that the decree of the court below be reversed, vacated and set aside, that decree of confirmation be entered in this court, or that such other order and decree be made as to this court shall seem proper.

F. W. CLANCY,
Solicitor for Appellant.

POINTS AND AUTHORITIES.

I.

The act of possession is satisfactory proof of the making of the grant.

The act of possession recites that the alcalde acts by virtue of the decree of the political chief, made on the 27th of February, 1824, and while that order can not now be produced yet it must be held that it was sufficient to authorize what was done by the alcalde who delivered the possession. It has been repeatedly held by this court that the acts of an officer to whom a public duty is assigned, are *prima facie* taken to be within his power, and that he who challenges the fact, takes on himself the burden of showing that the officer has transcended the powers conferred upon him.

Strother vs. Lucas, 12 Peters, 437-8.

United States vs. Peralta, 19 How., 347.

The failure to produce the order of the governor, under the peculiar circumstances existing in New Mexico which have made it impossible to consider the Spanish and Mexican archives and records as complete or as controlling, can not be imputed to these claimants as arguing a failure of proof. It is absolutely impossible at this late day for anyone to say what has become of the order of the political chief, but under the principle above invoked the burden of proof is upon the government to show lack of authority in the alcalde.

The nature, character and importance of delivery of juridical possession under the Spanish and Mexican governments have been declared by this court. This

proceeding has all the force and efficacy of a judicial determination, involved the ascertainment and settlement of the boundaries of the lands, and bound the former government and is equally binding upon the officers of our government.

United States vs. Pico, 5 Wallace, 539.
Graham vs. United States, 4 Wallacn, 259.
Van Reynegan vs. Bolton, 95 U. S., 33.
Malarin vs. U. S., 1 Wallace, 282.

II.

The long unbroken possession under a claim of a grant is sufficient proof upon which to base a presumption of the making and ratification of the grant as claimed.

This court has always attached great importance to the fact of long-continued possession under a claim of grant in cases where the grant was imperfect or the evidence adduced in its support was defective or secondary in character.

United States vs. Rocha, 9 Wall., 646.
United States vs. De Haro, 22 How., 297-8.
United States vs. Chavez, 159 U. S., 463-4.

In the case last cited the facts are not unlike those of the present case but there was very much less of evidence. No documentary proof was presented as to the making of the grant, but old men testified that the town of Cubero was settled in the year 1833, that possession had been had ever since, that the settlers had in their possession a written grant from the governor, that lands were distributed among the settlers, and that there was a tradition that one Hernandez had stolen or carried away the title papers of the grant. The record also showed the existence of a dispute between these settlers and the Pueblo of Laguna as to boundaries, which dispute appears to have extended from 1835 to 1841; and a number of

deeds were put in evidence variously dated from 1841 to 1856, showing sales of parcels of the lands. In the present case we have an equal amount of evidence of this character, and have also the undoubted act of juridical possession which shows the beginning of the grant. This court, in the Cubero case, said that it was scarcely necessary to consider the question of long-continued possession because there was ample evidence from which to find that the settlers had been put in juridical possession under a grant from the governor of New Mexico. In the present case there is direct and positive documentary evidence that the settlers were put in juridical possession under such a grant. The court, however, goes on to declare that a grant will be presumed upon proof of adverse, exclusive and uninterrupted possession for twenty years, and that while it is true that nothing can be claimed by prescription which owes its origin to, and can only be had by, a matter of record, yet lapse of time accompanied by acts done or other circumstances, may warrant the presumption of a grant by record.

III.

The power of the New Mexican authorities to make a grant in February, 1824, ought not to be doubted.

This court has repeatedly decided that while the court was under the dominion of Spain, governors had authority to make grants, and such power continued to be exercised under the Mexican government.

United States vs. Peralta, 19 How., 346.
Arguello vs. United States, 18 How., 457.
United States vs. Cambuston, 20 How., 63.

It may be contended that the change of sovereignty from Spain to Mexico, which is usually held to date from September, 1821, operated to revoke all power to alienate the public domain theretofore pos-

sessed by any local officers, and that no such power existed until created by subsequent acts of the new sovereignty. Substantially the same contention has already been made in this court in a recent case, but without success, and it should be equally unsuccessful in the present case. It that case the court held that it was true that a change of sovereignty implies a revocation of authority to local officers to dispose of the public lands, but it was pointed out that the new sovereign had made an order continuing the functions of the local officers.

Ely vs. United States, 171 U. S., 228 to 231.

There can be no doubt that the local authorities in New Mexico were among those whose functions were continued by the plan of Iguala and the order of the provisional council which is quoted in the case just cited.

Reynolds, Spanish law, 95.

While in the Ely case, it was an intendant whose authority the court upholds, yet the decision is equally applicable to a governor or political chief of New Mexico, as New Mexico was never put under any intendant, but was specially excepted when the intendants were created.

Ordenanzas de Intendentes, Art. X.

Moreover, the history of the country shows that the local authorities in New Mexico continued to exercise the power of making grants although it must be admitted that there does not appear to have been a large number made between 1821 and the date of the passage of the colonization law in 1824.

At the first glance it might appear that the case of *Hays vs. United States*, 170 U. S., 643, is a precedent against the claim in the present case, but examination will show this not to be so. In that case the court held that it was manifest that the necessary effect of the decree of July 6, 1824, which declared New Mexico a

territory, the colonization law of August 18, 1824, and the constitution of October 24, 1824, was to deprive the officials of a territory of power to dispose of public lands. The grant then under discussion was made in March, 1825.

None of these considerations are applicable to the present case, as our grant was made before the said laws or constitution came into existence; and the date of the governor's order, as recited in the act of possession, falls within the period when New Mexico appears to have been a state. It was so declared to be on January 31, 1824; and on July 6, 1824—perhaps illegally—made a territory; but by the constitution of October 24, 1824, it was certainly made a territory, and so ever after remained. The grant now presented was made in the latter part of February, 1824, and the juridical possession was delivered at some unascertained time prior to September 22, 1824, on which latter day the act of possession is dated at Abiquiu at considerable distance from the land granted

IV.

The presence of the act of juridical possession in the official archives, coupled with the fact of undisturbed possession under the grant, creates a presumption that the proceedings of the alcalde were approved by the political chief.

The statement of this proposition will undoubtedly at once call to mind a recent case in this court where there was an attempt by counsel for claimants to invoke such a presumption, but without success. In that case, however, it will be found that the alcalde commissioned for the purpose of delivering possession, states in his official act that he transmits his certificate to the superior authority in order that upon examination it might be decided as might be deemed just. The court held that the great difference between the

amount of land asked for and that delivered by the alcalde was such as to preclude any presumption of approval, based upon insufficient evidence of inadequate possession.

Bergere vs. United States, 168 U. S., 70 to 74.

In the present case it is to be noted that the alcalde who delivered the possession, certified that he delivered the act of juridical possession to Jose Rafael Samora as the principal party interested, and also states that the parties are to present the document to the political chief in order that he may approve, reform or decide what he might consider proper. Thus we find the certificate delivered to one of the grantees, and the next knowledge we have of it is that it forms a part of the official archives of the Mexican government where it has been certainly since the cession of the country to the United States. The indications are that Samora performed his duty by transmitting the paper to the political chief. When we remember that the settlers remained in possession of the lands granted for nearly 24 years before the Mexican government lost control over the country, without disturbance of any kind from the official authorities, it seems impossible to resist the conviction that the act of the alcalde was ratified and approved. But even if the political chief failed to act in the matter, that can not be imputed to Samora and his associates as a fault, but it must be held that the title granted was one which gave the right of possession and a right of property, certainly until some action was taken by the proper authorities against it. This principle has been many times recognized by this court in its decisions as to inchoate and imperfect titles. If no denouncement were made, no forfeiture declared, or no eviction had, by the authorities of the former government before the date of the treaty by which the country passed to the United States, the rights of owners were fixed by the treaty and it became too late for any such denounce-

ment, forfeiture or eviction at the hands of our
ment.

Fremont vs. United States, 17 How., 5
United States vs. Cervantes, 18 How.,
United States vs. Reading, 18 How., 6
United States vs. Noe, 23 How., 317.

It is respectfully submitted that there is ar
contradicted evidence to sustain the grant clai
that the decree of the court of private lan
should be reversed.

F. W. CLANCY,
Counsel for App

our govern-

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7.

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Appellant.

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1899.

NO. 50.

S. ENDICOTT PEABODY,
Appellant,
vs.
UNITED STATES.

REPLY BRIEF OF APPELLANT.

There are three things which are urged in the brief of the government in this case which require some answer from the appellant. These are:

First, That the act of juridical possession does not belong to the Spanish archives now in the office of the Surveyor General of New Mexico.

Second, That in 1824 there was no power in any officer in New Mexico to make a grant.

Third, That this case is controlled by the decision of this court in the San Miguel del Bado case.

I.

THE ACT OF JURIDICAL POSSESSION IS ONE OF THE SPANISH ARCHIVES.

The strongest argument made by counsel for the government against this paper being one of the Spanish archives is that it does not bear any archive number, like the two other papers which are numbered 898 in red ink. An examination of the original paper will show that three-fourths of the second half of the paper are missing, and it would be upon this portion of the paper, if anywhere, that the number 898 would naturally appear. It is to be borne in mind that in selecting and marking the archives which related to lands, at the time of the organization of the office of the Surveyor General in 1855, a number of papers in many cases were included under one number and put in one case or cover; and the list made and reported to Congress is practically no guide as to what is covered by each number. It is not true, however, that in all instances the red ink number was put upon each paper in a case or cover. In the present case it appears from the statement in the brief for the government that the number 898 on one of the papers as to which no question is made, appears to have been traced over pencil marks, and that Mr. Tipton is of opinion that the penciled number is in the hand writing of Mr. Whiting, the chief clerk in 1855. It is evident that the fact that this paper does not now bear the archive number can not be considered as conclusive against it. The translation of the muniments of title, made and sworn to by Samuel Ellison on the 20th day of May, 1875, includes the two documents which counsel for the United States concede to be archives, and also the act of possession, which could only be proper if the three belonged together and constituted archive

numbered 898; and it is to be further noted that this translation is certified by the official translator of the office of the Surveyor General to have been compared with its original in Spanish and found correct. This certificate appears to recognize that the three papers formed one single document in the archives of the office. It is also to be noted that the other paper, purporting to be a list of the individuals comprised in the grant, and which was undoubtedly presented to the Surveyor General by Ellison in 1875, is not in its translation made to form a part of the archive papers, but is translated, verified and certified separately.

No positive, direct evidence is presented on behalf of the government to show that the act of possession first came into the office of the Surveyor General in 1875. If it were the fact that that paper was then filed there for the first time, it is incredible that evidence does not exist of the fact, occurring as it did at a comparatively recent date; and it is no more than a just compliment to the energy and industry of the attorney who represents the United States in the court of private land claims, and of his numerous, efficient and accomplished assistants, to say that if any such evidence had been in existence, it would have been produced upon the trial of this cause. Failure to produce such evidence ought to be considered clear proof that it does not exist.

It is respectfully submitted that all the indications are in favor of the position taken in appellant's original brief that this paper formed a part of the Spanish archives.

II.

IN FEBRUARY, 1824, THE GOVERNOR OF NEW MEXICO HAD POWER TO MAKE GRANTS.

It is a general rule of international law that, upon a change of sovereignty, the general body of laws

remains in force until changed or repealed by the new sovereign. Counsel for the government clearly recognize this doctrine and the necessity for meeting it, as they urge that the imperial colonization law of January 4, 1823, operated as a repeal of all former laws for the disposition of vacant public lands. There is nothing in the law itself to support this assumption. An examination of that law will show that it was intended only to regulate the colonization of public lands by foreigners. With the exception of article eighteen, no word can be found in the whole of the law applicable to any one but foreigners, and it is clear that the statement in article eighteen that preference shall be given to the natives of the country in the distribution of lands, is separable from the rest of the law and was put in as a matter of precaution, so that foreigners could not be allowed to crowd out the native citizens or to obtain any undue advantage under the provisions of this law enacted for their benefit, Clearly, therefore, it cannot be considered as having displaced former laws as to the granting of public lands to native citizens of the country.

Reynolds' Compilation, 100.

Moreover, on the 8th of April, 1823, the Congress of Mexico declared that all acts of the imperial government from the 19th of May, 1822, to March 29, 1823, were illegal.

Reynolds' Compilation, 107.

Even if it should be conceded that this colonization law operated to repeal all existing laws on the subject of disposition of public lands, the repeal of that repealing act would undoubtedly revive the pre-existing laws.

It should be borne in mind also that by the plan of Iguala, proclaimed on the 24th of February, 1821, and by the plan of Vera Cruz on the 6th of December, 1822, the doctrine as to the continuance of former laws and of all public officials with their powers, was distinctly declared in unmistakable terms.

The correctness of the position here taken has been distinctly recognized by this court in a very recent decision which has already been cited in appellant's original brief.

Ely vs. U. S. 171 U. S., 228 to 231.

It is suggested in the brief on behalf of the government that there was some extraordinary unexplained delay in the delivery of juridical possession by the alcalde. Attention is called to the fact that the act of possession does not disclose the day upon which possession was delivered, and that its date at a place many miles distant from the land in question is no guide as to when the possession was actually delivered; and we must conclude that the possession was delivered within a reasonable time after the making of the order by the governor.

III.

THIS CASE DOES NOT FALL WITHIN THE RULE LAID DOWN IN RECENT DECISIONS OF THIS COURT AS TO COMMUNITY GRANTS.

It is contended by the government that this case is substantially the same as that of the grant known as the San Miguel del Bado.

U. S. vs. Sandoval, 167 U. S., 278.

It is asserted that, in this case as in the other, a list of the grantees was made out after the posses-

sion was delivered. In the former case the list referred to was made nine years after the grant by an alcalde who acted under the specific instructions of the governor and dated and signed his certificate and also certified the list of lot holders. In the present case the paper presented as a list is undated, unsigned, full of erasures and alterations, not in the same hand writing as the act of possession, so that it discredits itself upon its face.

This, however, may be unimportant, because even in the absence of any list to identify the grantees, their rights could still be preserved by the form of confirmation or be enforced after confirmation by appropriate proceedings in courts of ordinary jurisdiction. In the case above cited, at page 295, will be found stated the grounds upon which the decision of the court is put. It is there declared that the papers show an intention that a town should be, and it was, established; that the land asked for was intended not only for the first petitioners, but also for every one in the province not supplied, and that the conditions set out by the alcalde in his report, as agreed to by all the petitioners, contained the provision that the tract was to "be in common not only in regard to themselves, but also to all the settlers who may join them in the future."

Similar language is used in the papers of the Cañon de Chama grant, as is shown in the opinion of the court, that case being also cited by the government.

Rio Arriba Company vs. U. S., 167 U. S., 307.

In view of these provisions the court held that the title to the unallotted lands was reserved to the government and passed to the United States upon the cession of the country. In the present case no similar language can be found in the order of the

governor or in the act of possession, and obviously this case does not stand on the same footing as the grants passed upon in the two cases above cited.

To show the correctness of our position that some evidence in the grant itself must be found in order to justify such a decision as was made in the above cited cases, the attention of the court is called to the fact that the archives of the former governments show a number of instances where, in disputes as to matters of boundary, the ownership of grantees to the full extent of the out-boundaries has been sustained in cases where there also had been allotments in severalty to the grantees. A striking instance of this kind is to be found in connection with what is commonly known as the Bernabé Montaño grant, or the grant of the settlers of the Rio Puerco. This is cited here for the reason that the papers relating to it can be readily examined, having been printed in Congressional documents. The papers concerning the Montaño grant can be found in *Ex. Doc. 106, House of Representatives, 41st Congress, 3rd Session.* It will be seen that in this grant the governor declared that the land should be distributed to the settlers and that the families to whom land was so given only would have title to the particular tracts so assigned. Directions were given for the giving of building lots in such form that a compact settlement should be formed, easily defended against the savage Indians. The act of possession shows in detail the assignment to each settler of land for a house lot and of other land for purposes of agriculture, each of the last kind being 300 varas in length by 100 varas in width. Certain natural objects were given as out-boundaries, but a limitation was placed upon the extent of the land by a statement of the number of leagues in which it could extend in each direction. One of the settlers it appears attempted

to do away with this limitation by erasing the statement as to the distances, and the matter having been brought to the attention of the governor, he declared specifically that the leagues given, and not the natural objects, should govern the extent of the land.

Some years later Luis Jaramillo petitioned for land lying to the west of the Montaño grant, and the governor made the grant and directed Antonio Sedillo, chief alcalde of Laguna, to deliver possession. The alcalde in August, 1769, having summoned the adjoining settlers to appear to show whether there were any obstacle to the delivery of possession, reported that the settlers on the Montaño grant insisted that they would be greatly injured and prejudiced by the delivery of the land asked by Jaramillo, and the matter then came before the governor for his action. The governor directed the alcalde to proceed to the Montaño grant settlement and measure off to the westward one league and a half, as given in the grant, and at that place erect a land mark, and notify the settlers that that was the extent of their land, and then deliver to Jaramillo possession of the land granted to him. There is no hint anywhere in these proceedings by any one that the title of the Montaño grant settlers was limited to the lots of land given to them in severalty, but on the contrary there is distinct recognition by the governor of their absolute property right to the full extent of the land granted by his predecessor to a great distance beyond the small allotments of agricultural land. Had there been any idea at that time that the title to the unallotted land remained in the government and could be disposed of at the pleasure of the governor, it would undoubtedly have been asserted, especially in view of the fact that the governor appears to have regarded the settlers on the Montaño grant with well-founded dislike on account of their unlawful at-

tempts to enlarge the boundaries of their land, and expresses himself with great severity toward them. The papers in the Luis Jaramillo case will be found at pages 98 to 104 of *Ex. Doc. Number 62, House of Representatives, 43rd Congress, 2nd Session.*

A comparison of the grant papers in the Montaño case and in the present case will show that there would be much more reason for holding applicable to the former grant the rule laid down by this court in the cases of the San Miguel del Bado and the Cañon de Chama grants than there possibly can be for applying it to the present case; and yet, as we have shown, no such idea was entertained by the chief officer of the province of New Mexico in 1769, an officer who appears to have united in himself practically all judicial as well as executive functions.

It is respectfully submitted that no sufficient reason has been sbown on behalf of the government why the claim for this grant should not be sustained and a confirmation given which will inure to the benefit of all heirs and legal representatives of José Rafael Samora and his associates.

F. W. CLANCY,
Counsel for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

S. ENDICOTT PEABODY, appellant, v. THE UNITED STATES. } No. 268.

VALLECITO DE LOBATO GRANT IN NEW MEXICO.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT.

Three separate petitions were filed in the Court of Private Land Claims, seeking confirmation of what is commonly known and called the Vallecito de Lobato grant. The first was filed on February 28, 1893, by Merijildo

Martinez and others, alleging an interest by inheritance in the said tract of land, containing about 114,400 acres and situated in the county of Rio Arriba and Territory of New Mexico, known as No. 142 on the docket of the Court of Private Land Claims (R., 1–3). The second was filed on March 2, 1893, by S. Endicott Peabody, claiming the ownership of said tract, numbered on the docket of the Court of Private Land Claims as 204 (R., 3–5); and the third was filed on March 3, 1893, by José Salazar y Ortiz, claiming an interest in said grant, and known on the docket of the Court of Private Land Claims as No. 236 (R., 5–7).

The three cases were ordered by the Court of Private Land Claims consolidated for the purpose of trial and to proceed as one case under the title of No. 142 (R., 17).

Afterwards, on April 2, 1897, S. Endicott Peabody filed an amended petition (R., 12–15), which was occasioned by an order of the court requiring certain adverse claimants to be made parties defendant. The allegations of this amended petition are the same as the principal allegations in the three original petitions, which are substantially as follows:

That on February 23, 1824, José Rafael Samora, a citizen and resident of Ojo Caliente, on behalf of himself and twenty-five other persons, citizens of the Republic of Mexico and residents of said district in the Territory of New Mexico, presented his petition for a grant to them of the tract thereinafter described, and called and known as the Vallecito de Lovato, through Francisco Trujillo, constitutional alcalde of the district of Santo Tomas, of Abiquiu and San Andres, to Bartolomé Baca,

the then governor and political chief under the Republic of Mexico of the said Territory of New Mexico, and on February 27, 1824, the said governor granted the prayer of said petition and made the grant of land therein asked for, and directed the said Francisco Trujillo, alcalde, to place the said grantees in possession of said land; and on September 22, 1824, the said Francisco Trujilco, alcalde as aforesaid, placed the said grantees in juridical possession of the same and duly executed his certificate thereof, which was presented to and approved by the said governor and political chief, and the same was delivered to the grantee, José Rafael Samora, for himself and his said associates.

That upon the making of said grant José Rafael Samora and his associates, the said petitioner and grantee, received possession of said tract of land, and they and their respective heirs, grantees, and legal representatives have ever since been and now are in the actual, open, and exclusive possession of the said land as the owners thereof, under and by virtue of said grant.

The petition then sets forth the boundaries and location of the tract claimed, and that the same was surveyed by authority of the Government of the United States and was thereby found to contain an area of about 114,000 acres.

It further states that the said grant was theretofore submitted to the surveyor-general for the Territory of New Mexico, under the provisions of the act of Congress of July 22, 1854, and said officer, on October 13, 1875, made his decision and report approving said grant, and recommended that the same be confirmed, and trans-

mitted his said report and recommendation to Congress for its final action, but no action has ever been taken by Congress in regard thereto; and that the said claim has never been submitted to any authorities of the United States constituted by law for the adjustment of land titles within the limits of said Territory, otherwise than as before stated; but that on May 12. 1886, the then surveyor-general of New Mexico made a report thereon, termed a supplementary opinion, unfavorable to said grant, and transmitted the same to Congress; but no action has ever been taken by Congress or any authority constituted by law for the adjustment of land titles within the limits of said Territory, otherwise than as before stated; and the petitioner alleged that the said so-called supplementary opinion of said surveyor-general was wholly unauthorized and invalid.

The answer of the United States (R., 16) put in issue generally the allegations of claimants' several petitions, and alleged as a matter of defense that Bartolomé Baca, the political chief at the date of the instrument alleged as grant, had no authority to make a grant, and even if he had, he failed to sign the paper presented as a grant, and that the paper presented as a grant was at best a mere license to occupy the land until proceedings could be initiated and consummated vesting title in the grantees.

On May 20, 1897, the separate answer of the United States Land and Colonization Company and Thomas B. Catron was filed in case No. 204, one of the consolidated cases (R., 18–20). This answer, after traversing specifically the allegations of the amended petition, sets forth the illegality and want of authority for the proceedings

alleged to have been had, and alleges the adverse interests of these defendants and the title under which they so claim.

On May 22, 1897, the same defendants filed their separate answer in case No. 142 (R., 20–23), being practically the same matter as in their former answer, though couched in different language to some extent.

On September 15, 1897, R. W. D. Bryan filed a petition setting forth the fact of his appointment as receiver of the interests of S. Endicott Peabody in said grant, that he be permitted to become a party plaintiff in said cause, and praying a continuance of the same to the next term of court, and attached thereto copies of proceedings had in the district court of the second judicial district of the Territory of New Mexico, showing the appointment as such receiver (R., 23–28), which petition was granted and an order entered accordingly (R., 31).

The claims of all the petitioners were based upon various interests, acquired by inheritance or purchase, from a large number of persons to whom the land was allotted in severalty by the alcalde Trujillo.

Mr. Clancy, counsel for Peabody, offered in evidence three original Spanish documents, being—

(1) Petition of Jose Rafael Samora for himself and twenty-five individuals of the same district, to the constitutional alcalde of Abiquiu, Francisco Trujillo, dated February 23, 1824, which purports to bear an original indorsement by Francisco Trujillo, as follows:

> I do hereby certify that the above is true and the land applied for public, and I do not recognize those applying for the same as property holders.

(2) Unsigned order, supposedly a rough draft of the order of possession by the political chief to Trujillo, dated February 24, 1824.

(3) The act of possession (so-called juridical) purporting to have been executed by Francisco Trujillo and Juan José de Arza, secretary of the Cabildo, and attested by two witnesses, dated September 22, 1824, to which offer objection was made by Mr. Catron as improper, incompetent, irrelevant, and impertinent, and as not establishing any valid or legal grant in accordance with the petition in this case, and as being no evidence of a grant; that the papers were not genuine, and the signature of the governor on the paper is not genuine.

Mr. Pope, on behalf of the Government, admitted that it (the act of possession) came from the surveyor-general's office, but declined to admit that the paper offered constituted one of the archives of the former government.

Mr. Catron objected to the paper because it was not signed by the governor nor anyone else, and admitted that it came from the archives, "but do not admit its genuineness" (R., 32, 23).

Mr. Howard, counsel for a number of plaintiffs and claimants, offered in evidence a paper purporting to be a list of persons included in the Vallecito grant.

The four documents are marked in the record "Plaintiff's Exhibit A" (R., 38–41).

As an order has been made for transmission to the clerk of this court of the four original Spanish documents relied upon as evidence of title, it is deemed proper at this point to describe them fully.

First. The original petition by Samora and twenty-five others to Trujillo, the alcalde, dated at Abiquiu, February 23, 1824, upon which is a certificate of Alcalde Trujillo that the land was vacant and petitioners were without lands. This document is found among those official archives which were selected by two clerks of the first surveyor-general of the Territory, from the archives in the custody of the governor, one of whom was Mr. David Whiting, the chief clerk at that time; this petition was given the number "898" in red ink, at the top, and has been since known as archive "898." The letter "A," just above, in red ink, was placed there by Mr. William M. Tipton to distinguish it from the second document, which bears the number "898" in red ink, which is the unsigned draft of the order for possession. The case or cover in which these two instruments are held bears indorsement in the handwriting of Mr. Whiting, the first chief clerk, as follows:

"1824. Petition. Jose Rafael Samora and others. February 23. Land in Rio Arriba County," and in red ink the large figures "898."

Just below it has indorsement in the handwriting of Mr. David Miller, for many years chief clerk.

"Transferred to private land claim reported as No. 108 in name of Jose R. Samora."

The number "898," in red ink, on the side of the petition is in the handwriting of P. H. Warner, who was formerly a clerk in the office of the surveyor-general. The number "898," in red ink, on the unsigned draft of the order for possession appears to have been traced over

pencil marks, and Mr. Tipton is of opinion the penciled number is in the handwriting of Mr. Whiting.

The other two documents, respectively the act of possession, dated September 22, 1824, and the list of allotments, do not have any archive numbers. It is contended by the Government that neither of these constitutes part of the archives, but were filed in the case instituted before the surveyor-general on May 20, 1875, under the law of July 22, 1854.

As these original documents are before the court, it is deemed proper to set forth a copy of the petition filed before the surveyor-general under the law of 1854, under which the claim was first considered by the Government.

Hon. JAMES K. PROUDFIT,
U. S. Surveyor-General for New Mexico.

Your petitioners, the inhabitants of the town of Vallecito, in the county of Rio Arriba, in this Territory, respectfully represent to your honor:

That they are the owners in fee, and are and for the last fifty years have been in the quiet, peaceable, undisputed, and uninterrupted possession and enjoyment of a certain tract of land in said county, the boundaries of which are: On the north, the source of the Ojo Caliente River; on the east, the table-land of the Jara; on the south, the point on said river known as the Little Ford; and on the west, the mountain ridge known as the Horse Valley Ridge, embracing an area of about 30,000 acres, and all of which boundaries are points well known and easily found.

That your petitioners claim said la nd under a certain granting decree made in the year 1824 by the governor of New Mexico, then one of the territories

of the Republic of Mexico, and also in virtue of the continuous, legal, and undisputed possession thereof which they and their ancestors have held from the time of the said original concession to this present day, and also under the treaty of Guadalupe Hidalgo, stipulating and guaranteeing intact the rights of Mexican citizens in New Mexico.

That your petitioners herewith file the original and sworn translation of the original documents constituting their title, and also refer to document No. 898, among the archives of your office, as corroborative of said title, which document No. 898 your petitioners pray may be taken from among said archives and placed with and made a part of said claim; and they also herewith file a sketch map of the tract of land claimed by them as aforesaid.

That the number of permanent residents upon and occupants of said tract of land is not less than four hundred people, many of whom are engaged in the cultivation of the land and in the raising of live stock which they pasture thereon.

Your petitioners offer to present testimony before your honor, should you deem necessary, to prove the facts herein stated, at such time as your honor shall designate for the purpose.

Your petitioners pray that their title to said tract of land be investigated and approved to the inhabitants thereof, according to the respective rights of the original grantees and their heirs and legal representatives; that the same be confirmed by the Congress of the United States under the treaty of Guadalupe Hidalgo and the law of Congress of July 22, 1854, establishing your office, and that the land be surveyed and set apart to them by the Government.

SAML. ELLISON,
Attorney for Claimants.

It is insisted that the act of possession, dated September 22, 1824, and the unsigned and undated list of allotments were the documents referred to in the foregoing petition on behalf of the inhabitants of the town of Vallecito, and came into the custody of the surveyor-general at that time, and were not part of the original archives, as were the petition and unsigned draft of the order for possession. (See testimony of Merejildo Martinez (R., 61, 62), and Antonio de Vargas (R., 71, 72), and the testimony of Dionicio Vargos before the surveyor-general on May 20, 1875 (R., 53).)

As the original list of allotments is before this court, we have had Mr. Tipton make a careful examination of the same with a view of determining exactly what had been written. The result of Mr. Tipton's examination is found in a correct copy of the Spanish and translation thereof and attached to this brief as an appendix. It will be noted that the erasures contained in the original are printed in italics in the copy and translation.

A large amount of testimony was offered by claimants to connect themselves with some of the original allottees, either by deed or inheritance.

The patent and plat of the Tierra Amarilla grant, which partially conflicts with this grant, was introduced in evidence by the defendants the United States Land and Colonization Company and Thomas B. Catron (R., 73–89).

The Government introduced no oral evidence on the trial, except upon the question of the location of the natural object named as the west boundary.

It was contended on behalf of the Government:

First. That the documents offered in evidence by claimants were not sufficiently authenticated to establish their genuineness, and that, if sufficiently and satisfactorily authenticated, they do not purport to grant any land or pass any interest therein, but only a permissive possession preliminary to a grant which was never obtained.

Second. That the officials of New Mexico did not possess the power and authority to dispose of the vacant public land subsequent to the repeal of the imperial colonization law of January 4, 1823, until the issuance of the executive regulations of November 21, 1828.

Third. If the four documents offered as evidence of title were sufficiently authenticated and did pass an interest in the land, it was only to the specific allottees in severalty for the amount allotted each, and the *jus dispondi* of the remainder continued in the Government and was by the treaty transferred to the United States, and the claim comes within the rule announced by this court in the following cases:

United States v. *City of Santa Fe*, 165 U. S., 675.
United States v. *Sandoval et al.*, 167 U. S., 278.
United States v. *Rio Arriba Land and Cattle Co.*, *Ibid.*, 298.

The Court of Private Land Claims rejected the grant upon the ground that there was no satisfactory evidence that a grant had been executed, and dismissed the petition, and in due time S. Endicott Peabody appealed the case to this court.

The other plaintiffs and claimants below did not join in the appeal, and seem to have taken no interest or part therein.

ARGUMENT.

I.

The instruments presented as evidence of title do not purport to convey any interest in the property.

Construing the first three together—to wit, petition, unsigned order for possession, and act of possession—they clearly indicate no present interest was intended to pass.

Assuming for the purpose of this point that the unsigned order has been properly authenticated and foundation laid for its admission as secondary evidence, it clearly is against the contention of counsel for appellant and renders untenable the position that the act of possession was sufficient evidence of the grant.

The following is a recent translation by Mr. Tipton of the unsigned order for possession known as archive "898:"

> In virtue of your report you may proceed to place Jose Rafael Samora, with the twenty-five persons who join him in his petition, in possession of the lands he asks for, in order that they may not lose time in going to work; nor shall you act with the necessary formalities, which can not be had now on account of the most excellent deputation, to which body the matter belongs, not being in session.
>
> I enjoin upon you that in placing them in possession you treat these unfortunate persons with charity, charging them for your work in proportion to their adverse circumstances rather than according to the tariff of fees that is in force.
>
> God, etc., February 27, 1824.
>
> To the Alcalde of Abiquiu.

The act of possession (R., 42, 43) seems not to have been executed with that haste the unsigned draft of the order for possession seemed to require. It bears date September 22, 1824, but recites that it was made by virtue of the decree of Bartolomé Baca, actual (present) political chief of this province, given at Santa Fe on the 27th of February, 1824, and this delayed act of possession clearly shows that it was not intended to convey any present interest, but only a permissive possession.

The alcalde, in the body of this report, says:

> And having examined the said land and seeing its extent and proportions, the parties interested being present and *others who joined them according to the list they presented*, all having agreed among themselves that at no time there should be interruptions or differences among them, I measured off to each one at the rate (de á) fifty varas to some, in conformity with the extent of the land, to others one hundred varas, and one hundred and fifty varas to the said Jose Rafael Samora, as principal petitioner; with which distribution they remained well contented and satisfied, there remaining free the so-called Badito and cuestecita for a common watering place, and in the center of the canoncito to the lands called those of *Juan Benito Sanches*, having for the site of the plaza one hundred and fifty varas, the limits of said distributed land being, on the east, the mesa of the Zorita; on the west, the cuchilla called del Valle de los Caballos; on the north, the course of the said river, and on the south, the Badito, where the grant joins Juan Galbis, there being no one who contradicted or made any demands as to injury in the distribution of the land; and that this common distribution may appear as made to these residents and citizens I charged them to endeavor to fortify

> themselves for their own defense; to cultivate and advance agriculture for their own benefit by forming a considerable settlement as provided by the laws, giving them to understand that as new colonists they shall exert themselves, not being authorized to exchange, sell, or alienate the same until they shall have acquired title or have sufficient time to do so; and should any, before the termination of this time, for their own particular convenience or for increasing their land, wish to go and settle another place they remain notified that they shall renounce this grant in order to be admitted in another, having to present this document to the political chief in order that he may approve, reform, or determine that which he may deem proper.

It would seem that such recitals in an act of possession, either under an order of the political chief, such as the unsigned draft, or in the total absence of any evidence of what it was, can hardly be called "*juridical*" in the sense that that term is used in Spanish and Mexican land laws, and carries with it no presumption in favor either of its genuineness or subsequent approval.

For appellant to sustain this claim as a grant passing such an interest that the Mexican Government could not disavow but was bound to recognize, not as a matter of grace, but as a matter of right (sec. 13, subsec. 1, act 1891), a remarkably free indulgence in the doctrine of presumption is necessary, and is contrary to the recitals contained in the documents introduced by appellant in the court as evidence of title, which seem as inadmissible as in *Bergere* v. *United States* (168 U. S., 66, 75).

The presumptions in which this court is called upon to indulge are numerous.

First. That the political chief of the province on February 24, 1824, made a grant in form to Samora and twenty-five others.

Second. That the act of possession dated September 22, 1824, was executed in conformity with such unknown granting decree.

Third. That such act of possession was returned to the political chief and approved by him or other lawful authority.

Fourth. That he possessed the power and authority on February 24, 1824, to make a definitive grant in the first instance, and possessed the power and authority in September to make a definitive grant upon permissive possession given under an undisclosed order of the political chief made on February 24, 1824.

It is further contended by the United States that the evidence clearly shows that the act of possession and the list of allotments were never part of the archives.

First. They do not bear any evidence of ever having received any archive number, as did the petition and unsigned draft of the order for possession, which are separate and distinct documents; and it is probable had they been part of the archives they would have received the number "898."

Second. The petition filed on behalf of the inhabitants of the town of Vallecito on May 20, 1875, under the law of July 22, 1854, states:

> That your petitioners herewith file the original and sworn translation of the original *documents* constituting their title and also refer to document number 898 among said archives of your office, as corroboration of said title, which document No. 898

your petitioners pray may be taken from among said archives and placed with and made a part of said claim.

This was done, as appears by the indorsement on the cover inclosing archive 898.

Quere: What documents, save the act of possession and list of allotments, were referred to in that petition?

Third. Merejildo Martinez, one of the claimants, testified he had seen the grant document of Vallecito in possession of Antonia Trujillo. (R., 61, 62.) (Testimony of Antonio de Vargas; R., 71, 72.)

Fourth. The act of possession seems to have been left with the persons placed in possession, probably at Samora, in order that it might be returned to the political chief for his action as provided at the conclusion thereof.

Nothing appears to show that it was returned, but the petition presented to the surveyor-general on May 20, 1875, and the testimony of Martinez and Vargas would indicate that it was one of the documents presented at that time. Had it been returned to the political chief he probably would have made some indorsement thereon of his approval, disapproval, or reference to the excellent deputation for its action.

It is believed, admitting, *arguendo*, the full force that can be given to all the muniments of title in the record, it was a permissive possession which never ripened into a grant entitled to recognition under the law of March 3, 1891; and the claim is clearly within the principles announced in various decisions of this court upon claims for confirmation based upon permissive possession preliminary to grant.

In the case of *De Haro* v. *United States* (5 Wall., 599), it was held that the decree of the governor was a naked license to occupy the land provisionally, and that the instrument conveyed only a license uncoupled with an interest and a grant.

A claim for land resting upon a license of this character is not entitled to confirmation under the act of Congress of March 3, 1851.

The unsigned order (R., 41, 42) and the act of possession (R., 42, 43), both show the possession was preliminary to title being afterwards acquired, which does not appear to have been obtained, and hence, under the provisions of the act of Congress of March 3, 1891, is not entitled to confirmation. (*United States* v. *Baltimore*, 98 U. S., 424.)

Mr. Justice Davis, for the court, in the *De Haro Case* (5 Wall., 627), says:

> There is a clear distinction between the effect of a license to enter lands, uncoupled with an interest, and a grant. A grant passes some estate of greater or less degree, must be in writing, and is irrevocable unless it contains words of revocation; whereas a license is a personal privilege, can be conferred by parol or in writing, conveys no estate or interest, and is revocable at the pleasure of the party making it. There are also other incidents attaching to a license. It is an authority to do a lawful act which without it would be unlawful, and while it remains unrevoked is a justification for the acts which it authorizes to be done. It ceases with the death of either party and can not be transferred or alienated by the licensee, because it is a personal matter and

> is limited to the original parties to it. A sale of the lands by the owner instantly works its revocation, and in no sense is it property descendible to heirs. These are familiar and well-established principles of law, hardly requiring a citation of authorities for their vindication; but if they are needed they will be found collected in the notes to 2d Hare & Wallace's American Leading Cases, commencing on page 376. We are not aware of the difference between the civil and common law on this subject. * * * The continued possession by the father and those under him estops no one, certainly not a sovereign power like Mexico or the United States.

In the case of *Serrano* v. *United States* (5 Wall., 451, 461), wherein it was insisted that if the legal title should fail, yet the notorious and long-continued possession establishes an equitable one, it was held that—

> The actual possession in this case was limited to a very small quantity of ground; but, conceding that it embraced 5 leagues, no equities attached to it, considering the manner in which it was obtained and continued. There is no adverse holding here, but the possession was a permissive one and consistent with the proprietary interests of Spain and Mexico; and the fact that those Governments did not terminate the possession, which was a mere tenancy at will, can not create an equity entitled to confirmation. Serrano held under a license to occupy, and that license could be revoked at any time. The failure to revoke it can not change the original character of the possession into an adverse one. If Serrano had entered into possession under a claim of right, and had title papers, though imperfect, he might say that the length of his possession entitled him to the favorable consideration of the court. Not so, however, where he had

no interest in the land, never applied for any, either to Spain or Mexico, and was content with a permission to occupy it for the purpose of pasturage.

It is admitted by appellant's counsel that he "must rely upon the undoubted act of juridical possession for evidence of making of the grant by the governor," and he contends that "the familiar doctrine of presumption in favor of the regularity of official acts is undoubtedly applicable." It is not, however, admitted by the Government that the instrument called the act of juridical possession carries with it any probative force or presumption that the political chief (governor) ever authorized it, or that it was signed and executed by anyone authorized to bind the former Government. There is no evidence in its favor upon which a presumption can be predicated, because:

1. It is produced from private hands and does not appear to have been returned to the political chief.

2. Internal evidence contained in the instrument clearly shows no title, either perfect or imperfect, was expected or intended to pass thereby, as the alcalde gave the allottees to understand that they were not "authorized to exchange, sell, or alienate the same until they shall have acquired title or have sufficient time to do so, and should any before the termination of this time, for their own particular convenience or for increasing their land, wish to go and settle another place, they remain notified that they shall renounce this grant in order to be admitted in another, having to present this document to the political chief in order that he may approve, reform, or determine that which he may deem proper." (R., 42.)

Such recitals are fairly referable to orders previously received from the political chief, and under limitations prescribed by him. The allottees having been made the custodians of the same, must be held to account for its presentation with the petition as evidence of title. If, however, it was returned subsequent to September 22, 1824, as required by its terms, for action by the political chief, no steps seem to have been taken by the officials of the Republic of Mexico as to the approval, reformation, or other determination which was required before any estate passed. Had it been properly returned, it is likely that some indorsement would have been on it or some instrument issued to those returning it to the political chief, as evidence of title, if any estate was intended to be vested. It is true that the archives have been poorly preserved and little reliance can be placed upon them as to what they formerly contained, still such rulings as have been repeatedly insisted upon in many cases presented under the act of 1891, by reason of their spoliation and without any evidence even of a secondary nature to show some connection between the lost archives and the instrument and claim before the court, would place a judicial premium upon suppression of evidence in private possession and foster a designed indifference to any attempt to discover some connection between the archives and the grant, relying upon the safer general inference to be drawn from the total absence of any evidence by record of a final grant, and presuming that all the restrictions and limitations specified in the seventh and tenth sections of the act of 1891 have been fully met.

The general rule which should apply seems to be that testimonios or muniments of title delivered to a private party as evidence of titie from the sovereign under all governments presupposes a record, and such muniments are only of the nature of letters patent. The record is the basis of such testimonios and letters patent. If it does not appear affirmatively that such record exists, the essential superstructure must be erected by the plaintiff that such records have been lost or destroyed, and some connection must be shown between the lost records and the grant, so that its verity can be fairly determined in the affirmative; otherwise the entire case should fail for want of legal proof.

Romero v. *United States*, 1 Wall., 721.
Peralta v. *United States*, 3 Wall., 434, 440.
Pico v. *United States*, 2 Wall., 279.
United States v. *Cambuston*, 20 How., 59.
United States v. *Sutter*, 21 How., 175.
Fuentes v. *United States*, 22 How., 443.
United States v. *Teschmaker*, 22 How., 392, 405.
United States v. *Castro*, 24 How., 346.
United States v. *Neleigh*, 1 Black, 298.
United States v. *Vallejo*, ibid., 541.

The recital of the alcalde in the act of possession in the Petaca grant, now before this court in the case of *United States* v. *Pena et al.*, No. 293, October term, 1898, that it was bounded on the west by "the boundary of the Valecito grant" (R., 90), does not furnish evidence of a grant to Samora and others. Even had the recital been made by the political chief in a granting decree it would have been insufficient to establish a grant or its character or a

compliance with the formalities requisite to vest an interest in the land which can be judicially recognized under the limitations of the law of March 3, 1891.

Sections 7, 13, act of 1891.
United States v. *Teschmaker*, 22 How., 404.
United States v. *Castro*, 24 How., 346.

Permissive or provisional possession, such as in this case, furnishes no evidence of the grant, its form, requirements, nor of its record, and under such possession of small quantities of land in severalty, it is now sought to interpose the legal presumption that the grant is one which appears to be "upon a title lawfully and regularly derived from the Government of Spain or Mexico," and one that, if not complete and perfect at the date of the acquisition of the territory by the United States, the claimants would have had a lawful right to make perfect had the territory not been acquired by the United States (sec. 13, subsec. 1, act of 1891); that it had reached that point in the proceedings where the former Government could not lawfully disavow it and hence estop the former sovereign power, and necessarily the United States.

It is not believed that the case is entitled on the evidence to any status under the limitations of the act of 1891, and the Court of Private Land Claims did not err in holding that the claim had not been established by full legal proof upon the hearing.

II.

From April 11, 1823, to November 21, 1828, there was no power or authority in any official or official body in New Mexico to dispose of the vacant public lands.

The petition by Samora and his associates is dated February 23, 1824, and the unsigned draft of the order for possession is dated February 27, 1824. The act of possession is dated September 22, 1824, and by its terms does not purport to pass any vested interest which the Mexican Government was bound to recognize as a matter of right or which it could not lawfully disavow, so that no such disposition by way of grant is disclosed by the evidence in this case. The historical status of the Government from the Declaration of Independence on February 24, 1821, to November 21, 1828, has been under consideration by this court in a number of cases, particularly in *Hays* v. *United States*, 170 U. S., 637, and *Ely's administrators* v. *United States*, 171 U. S., 220.

It is well to note that the transfer of title under consideration in the latter case was initiated on May 29, 1821, and the expediente concluded on November 12, 1821, upon which date the record disclosed payment of the purchase money for $1\frac{3}{4}$ sitios of land. Final title was not issued on this expediente until May 15, 1825, by Juan Riesgo, commissary-general. In discussing the departures from the ordinance of intendants, Mr. Justice Brewer (p. 226), referring particularly to the departure under the imperial colonization law of January 4, 1823, says:

> It may be well here to note that the colonization law was not passed until after the sale in controversy had taken place.

And for the purposes of this case it is thought sufficient to treat the imperial colonization law of January 4, 1823, as the date at which all former laws for the disposition

of the vacant public lands by the provincial officers ceased to have any force in Mexico. This law was certainly in force during the reign of General Iturbide, and until April 11, 1823, when the constituent congress suspended the same, with a saving clause in favor of Austin, until a new resolution on the subject should be enacted (1 White's Recop., 594; Reynolds, 108), and is translated in the following language:

> In this (order) the Government is instructed, if it does not find it inexpedient, to accede to the application of Stephen Austin to confirm his concession to establish 300 families in Texas; to act upon other applications of like nature, and to suspend until a new resolution the colonization law enacted by the instituent council (junta).

No other resolution is found upon the subject until the passage of the colonization law of August 18, 1824, which, as to the Territories, was not self-enforcing and required regulations to be issued by the chief executive on the subject before the Territorial officials could lawfully intervene in the disposition of the vacant public lands. The executive did not issue such regulations until November 21, 1828. Considering these various provisions under the decisions of the Hays and Ely cases, it would seem to follow that neither the political chief nor provincial or Territorial deputation could lawfully dispose of the vacant public lands in New Mexico between April 11, 1823, and November 21, 1828.

Hays v. *United States*, 170 U. S., 637.
Ely's administrators v. *United States*, 171 U. S., 220.

The legal presumption of the existence of power from the fact of its exercise is fully discussed in these cases and held inadmissable under the terms of the act of 1891, and the distinction clearly drawn between the controlling limitations prescribed by that statute and those for settlement of land titles under the Florida and California acts. Almost every decision rendered in cases appealed from the Court of Private Land Claims to this court holds against the indulgence in such presumptions under the present law, which were permitted in many instances under the Florida and California acts.

Giving to the instruments offered as evidence of title the force that can fairly be asked for them, no grant of any vested interest was ever made and no permissive or provisional possession seems to have been given until September 22, 1824, after the colonization law of August 18, 1824, had become the law of the land, and the evidence of an attempted exercise of power, either lawful or unlawful, on the part of the Territorial officials is wanting in this case.

III.

The appeal is being prosecuted alone by Peabody, and udging from the amended petition filed in his behalf (R., 12-15) it is evident he seeks to have the decree of the Court of Private Land Claims reversed and a confirmation to himself as the legal successor in interest of José Rafael Samora, the only individual whose name is disclosed by the petition itself, although it purports to have been made by Samora for himself and "twenty-five

individuals of the same district," in pursuance of a contention that Samora was vested with the title to the entire tract, subject to such equitable rights as those who accompanied him, though unnamed, and their legal representatives might be able to charge him with in the local courts as confirmee.

The appellant, Peabody, stands in exactly the same position occupied by Morton as the legal representative of Lorenzo Marquez, the original and only named petitioner disclosed by the petition made for the San Miguel del Bado grant. (*United States* v. *Sandoval*, 167 U. S., 278, 283.) In neither instance was the list of the individuals accompanying the respective petitioners given, nor was it made to appear who they were until after the execution of the act of possession by the alcalde. The act of possession, however, in the case at bar is much more specific in its recitals as to allotments than in the San Miguel del Bado grant case, although the individuals are not named, save the petitioner. Subsequently, however, in each case a list of the allottees was made out. It is true that the list of allottees in the present case is unsigned and undated, yet it is fairly referable to the recitals contained in the act of possession, although it is contended by the appellant that the amount of land set forth in the allotment does not correspond to the quantity of land contained in the act of possession. As suggested before, in the original list of allotments there is a number of erasures and the figures were evidently poorly made. After a careful examination of it, there is attached hereto as an appendix a copy and translation of this list, made

by Mr. Tipton, in which the amount of land allotted fairly conforms to the amount suggested in the act of possession. However, allotments were evidently made by the alcalde, as appears by the act of possession, and as this list must have been presented to the surveyor-general under the law of July 22, 1854, with the original petition filed on behalf of the inhabitants of the town of Vallecito, it is thus made to appear that there were other allottees than Jose Rafael Samora, and their identity disclosed.

It is apparent from the recitals of these muniments of title that it was an attempt to hurriedly establish a town at Vallecito, and the allotments made were not to be considered as passing an estate until after they had received some affirmative action on behalf of the political chief, as suggested in the act of possession. In this respect it differs from the act of possession in the San Miguel del Bado Case. In neither event did such an interest pass to any land as will enable Peabody, as the legal representative of Samora, to obtain the title in trust for himself and the others as their interests might hereafter appear, for that no community of interest existed between Samora and any of the allottees, whatever their grade of title may have been, and as to all of the unallotted lands the *jus disponendi* remained in the Mexican Government and at the cession of the territory passed to the United States.

It is contended that in no event is the grant entitled to confirmation for the whole or any part of it, for the reason that as to the allotments there was no community of interest, and as to the unallotted lands, the title is

still in the United States, and for this point the case clearly falls within the rule established in—

United States v. *Sandoval*, 167 U. S., 278.
Rio Arriba, etc., Company v. *United States*, 167 U. S., 298.
United States v. *Santa Fe*, 165 U. S., 675.

Respectfully submitted.

JOHN K. RICHARDS,
Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

APPENDIX.

[The italics indicate words which in the original document appear to be attempted erasures.]

Lista de los ynderidos que conprenden ha esta merse del vayesito que comunmente yaman de Lorato y son como sigen.

Tomas Chacon unas sovras	
Pumuseno Estrada	150
Juan Siriaco Garcia	150
Fransisco Archuleta	150
Manuel Archuleta	200
Juan de Dios Trugio	200
Juan Christoval Quintana de una vanda	300
Juan Benito Sanches	200
Juan Samora de una vanda	150
Manuel Samora y Jose Samora una vanda desde el lindero del dicho Sanches hasta el Cañonsito Jose Martin desde onde comiensa el cañonsito del lado de ariva hasta el lindero a Franco Valdes el dicho Franco Valdes sien	100
Rafael Valdes	100
Juan Felipe Naranjo	100
Manuel Martin	100
Rafael Samora Antonio Jose Lucero	100
Manuel Marques	100
Carlos Valdes Franco Gallegos	100
Antonio Domingo Garcia	100
Jose Manuel Valde	100
Jose Rafael Salas	100
Juan Lorenso Martin Franco Trugiyo	100
Jose Rafael Samora	125
Juan Pedro Samora	100
Migel Samora	100

Siento sinquenta de una vanda y tra libres para qe se aga la plasa .....

Juan de los rreyes Sena 100
Jose Gayego Franco. Trugillo 100
Rafel Valverde 100
Pedro Valverde 100
Jose Grabiel Quintana Franco. Espinosa 100
Grabiel Espinosa 100
Jose Antonio Gonsales 100
Manuel Silvestre Trugio 100
Migel Maes Juan Manul Olgin 100
Jose Quintana Martin Bigil 100
Juan de Jesus Fernandes Manul Chaves 100
Manuel de Jesus Salasar 100
Franco. Trugio 100
Juan de Jesus Chaves 100
Franco. Estevan Chaves 100
Grabiel Quintana Juan Senon Trugillo 100
Migel Sena 100
Jose Ortis 100
Juan de Jesus Abila 100
Bartolo Chaves 100
Juan de Jesus Martin 100
Manuel de Jus Trugio 100
Bisente Lucero Juan Agustin [illegible] 100
Lonisio Vegil 100
Jose Fransisco Serda 100
Juana Angela Samora 100
Matias Gonsales 100
Bisente Lusero .....
Ysidro Trugillo Juan Senon Trugillo 100
Martin Begil 100

[Translation.]

List of the persons who compose this grant of the Vallecito, which they commonly call Lovato's, and they are as follows:

Tomas Chacon, some overpluses ..... ——
Pumuseno Estrada 150
Juan Siriaco Garcia 150

Francisco Archuleta 150
Manuel Archuleta 200
Juan de Dios Trugio 200
Juan Christoval Quintana, on one bank 300
Juan Benito Sanches 200
Juan Samora, on one bank 150
Manuel Samora and Jose Samora, on one bank from the boundary of the said Sanches as far as the little canyon .....——
Jose Martin, from where the little canyon begins on the upper side as far as the boundary of Francisco Valdes .....——
The said Francisco Valdes, one hundred 100
Rafael Valdes 100
Juan Felipe Naranjo 100
Manuel Martin 100
Rafael Samora, Antonio Jose Lucero 100
Manuel Marques 100
Carlos Valdes, Francisco Gallegos 100
Antonio Domingo Garcia 100
Jose Manuel Valde 100
Jose Rafael Salas 100
Juan Lorenso Martin, Francisco Trugiyo 100
Jose Rafael Samora 125
Juan Pedro Samora 100
Miguel Samora 100
One hundred and fifty on both banks free, in order that the plaza may be laid out.
Juan de los Reyes Sena 100
Jose Gayego Francisco Trugillo 100
Rafel Valverde 100
Pedro Valverde 100
Jose Grabiel Quintana Francisco Espinosa 100
Grabiel Espinosa 100
Jose Antonio Gonsales 100
Manuel Silvestre Trugio 100
Migel Maes Juan Manuel Olgin 100
Jose Quintana Martin Bigil 100
Juan de Jesus Fernandes Manul Chaves 100
Manuel de Jesus Salasar 100
Francisco Trugio 100
Juan de Jesus Chaves 100

PEABODY *v.* UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

No. 50. Argued October 17, 1899.— Decided January 8, 1900.

This court holds in this case that there is no proof of any grant to the petitioner or those under whom he claims, and affirms the judgment of the court below in favor of the United States.

The claim of adverse possession (by those under whom the petitioner claims) down to the time of the occupation by the United States, is not sustained by the proof.

THE statement of facts will be found in the opinion of the court.

Mr. F. W. Clancy for appellant.

Mr. Matthew G. Reynolds for appellee. *Mr. Solicitor General* was on his brief.

MR. JUSTICE PECKHAM delivered the opinion of the court.

This is an appeal from a judgment of the Court of Private Land Claims dismissing the petition of the appellant and rejecting his claim to some 114,000 acres of land in the Territory of New Mexico, on the ground that it had not been sustained by satisfactory proof.

The petitioner in the court below in his petition for confirmation of the grant stated that on the 23d of February, 1824, José Rafael Samora, a citizen and resident of Ojo Caliente, on behalf of himself and twenty-five other persons, citizens of the Republic of Mexico, and residents of said district in the Territory of New Mexico, presented his petition for a grant to them of the tract therein described and called the Vallecito de Lovato, and the appellant's petition alleged that the governor granted the prayer, made the grant of land therein asked for, and directed the alcalde to place the grantees in possession, and that on September 22, 1824, the alcalde did place the grantees in juridical possession of the land, and executed his certificate thereof, which was presented to and

approved by the governor and delivered to the grantee, José Rafael Samora, for himself and his associates.

Various other facts were set up in the petition to show title in the petitioner, which it is not necessary to state.

The answer of the Government put the facts in issue, and the case duly came on for trial.

The following papers were put in evidence on the trial by the appellant:

(1.) "Translation of Muniments.

"Hon. constitutional alcalde of Abiquiu, Francisco Trujillo:

"I, José Rafael Samora, citizen and resident in the district of Ojo Caliente, together with twenty-five individuals of the same district, appear before you with the greatest respect and humility and in due form of law, and state, sir, that there being sufficient land in the Vallecito of Lovato to give us in possession we now ask that in the goodness of your heart you grant us the same, for we have not any place wherein to plant grain for harvesting, whereby we think the others, the residents of said district, will receive no injury.

"Wherefore we humbly request your honor, as our protector and as a lover of our country, to grant us said possession, whereby we will receive favor and benefit.

"Abiquiu, February 23, 1824. For all those stated.

JOSE RAFAEL SAMORA."

"I do hereby certify that the above is true and the land applied for, public, and I do not recognize those applying for the same as property holders.

FRANCISCO TRUJILLO."

(2.) (Unsigned Order.)

"The land applied for by José Rafael Samora, together with the twenty-five accompanying individuals in his petition, in virtue of your report, you may proceed to place them in possession, in order that they may not lose time in their labor until the necessary formalities can be had, which cannot be verified at this time, the excellent deputation not being in session to whom the matter pertains.

"I charge you to treat those unfortunate persons with consideration on placing them in possession, charging for your labor according to their wants and not more than the fee bill allows.

"God and (liberty). February 27, 1824.

(No Signature.)

"To the alcalde of Abiquiu."

(3.) The act of possession. This paper is signed by Francisco Trujillo, constitutional alcalde of the proper district, and after declaring that by virtue of the decree of Bartolome Baca, actual political chief of the province, given at Santa Fé on the 27th of February, 1824, on the petition presented by José Rafael Samora and his associates, requesting that there be adjudged to them a tract of public land, the alcalde states: "And having examined the said land and seeing its extent and proportions, the parties interested being present and others who joined them according to the list they presented, and all having agreed among themselves that at no time there should be interruptions or differences among them;" he thereupon measured off to each one a certain quantity of land and placed them in possession.

The alcalde also states that he charged them to endeavor to fortify themselves for their own defence, etc.; and as to the lands of which he then delivered possession, he gave them "to understand that as new colonists they shall exert themselves, not being authorized to exchange, sell or alienate the same until they shall have acquired title or have sufficient time to do so." This paper is dated the 22d of September, 1824. It is signed by Francisco Trujillo, but it does not appear when the possession was delivered, the certificate being dated at Abiquiu, which is many miles from the Vallecito, the location of the grant.

There was also put in evidence the act of possession in what is called the Petaca grant, dated March 25, 1836, in which it is stated that it is bounded on the west "by the boundary of the Vallecito grant," which it is claimed by the appellant is an admission of the existence of the grant in question.

Evidence in regard to possession was also introduced.

Upon the question whether the papers thus proved showed any grant of lands, the counsel for the Government contended that they did not purport to grant any land or pass any interest therein, but gave only a permissive possession preliminary to a grant which was never obtained.

Without discussing the various other objections which were raised against the confirmation of this alleged grant to the petitioner, we are of opinion that the above objection was well taken, and that there was no sufficient evidence of any grant whatever.

The petition signed by Samora, in behalf of himself and twenty-five other individuals of the same district, asks that the alcalde may give them possession of the land, as they have no other place wherein to plant grain for harvesting, and they think that the others, the residents of the district, will receive no injury, and therefore they request that the alcalde, as their protector and as a lover of their country, may grant them such possession, etc. At the very commencement, therefore, we find that the petition was not one for the granting of title, but simply one for the granting of possession to land, in order that they might plant their grain for harvesting. Trujillo certifies that the statement in the petition is true and the land applied for is public, and that he does not recognize those applying for the same as property holders.

Then comes the unsigned order directing the alcalde of Abiquiu to "proceed to place them (Samora, with the twenty-five accompanying individuals named in the petition) in possession, in order that they may not lose time in their labor until the necessary formalities can be had, which cannot be verified at this time, the excellent deputation not being in session to whom the matter pertains." Then the certificate of Trujillo, which is termed by the appellant "the certificate of the delivery of juridical possession of the lands to the petitioner," shows on its face that it was not the ordinary delivery of juridical possession under a grant of title to land, but that it was a mere placing of the petitioner in possession under a license of the authorities accompanied by a distinct statement that the peti-

tioner and his associates were not "authorized to exchange, sell or alienate the lands until they shall have acquired title or have sufficient time to do so."

These three papers, which form the basis of the appellant's claim of title, fail when examined to show any title whatever in him. There is in these papers no evidence of any grant of title to these lands to Samora or his associates. It may be that he and his associates hoped thereafter to obtain title, but it was certainly not granted by these papers. This unsigned order and the act of possession, when taken together, show that the possession that was delivered and taken was preliminary to the title which was afterwards to be acquired, and there is no proof that such title ever was thereafter obtained.

In *De Haro* v. *United States*, 5 Wall. 599, 627, the decree of the government was, in that case, held to be a naked license to occupy the land provisionally, and hence was not entitled to confirmation under the act of Congress of March 3, 1851. The distinction between the effect of a license to enter upon lands uncoupled with an interest therein, and a grant of some title, right or interest in lands, is stated by Mr. Justice Davis in that case, in which he said: "A grant passes some estate of greater or less degree, must be in writing, and is irrevocable unless it contains words of revocation; whereas a license is a personal privilege, can be conferred by parol or in writing, conveys no estate or interest, and is revocable at the pleasure of the party making it."

It is urged that the fact of the possession by Samora and his associates, and their heirs, grantees, etc., down to the time of the American occupation of the country, is strong — if not conclusive — evidence of the making of a grant in accordance with the original claims of those petitioners, and that a grant should therefore be presumed.

The possession must be adverse, exclusive and uninterrupted, and inconsistent with the existence of title in another.

Its character in this case, however, appears from the papers not to have been adverse to the government, nor to have originated with a claim of title under a grant; and from the time it was delivered up to the time of the American occupation,

whatever possession there was, was entirely consistent with that which was given by the above act, a merely permissive occupation, and therefore we cannot presume that it was subsequently changed to that of a possession under a grant, without any evidence of the existence of the grant other than that derived from the papers put in evidence, which show that such possession was permissive or by license only.

As is stated in *Serrano* v. *United States*, 5 Wall. 451, 461, "There is no adverse holding here, but the possession was a permissive one, and consistent with the proprietary interests of Spain and Mexico; and the fact that those governments did not terminate the possession, which was a mere tenancy at will, cannot create an equity entitled to confirmation. Serrano held under a license to occupy, and that license could be revoked at any time. The failure to revoke it cannot change the original character of the possession into an adverse one. If Serrano had entered into possession under a claim of right, and had title papers, though imperfect, he might say that the length of his possession entitled him to the favorable consideration of the court. Not so, however, where he had no interest in the land, never applied for any, either to Spain or Mexico, and was content with a permission to occupy it for the purposes of pasturage." This was the character of the possession of the grantors of the petitioner. Indeed, whilst under the civil law, including the Spanish law, one may prescribe beyond his title, he cannot do so contrary to the title. See *Zeringue* v. *Harang*, 17 La. 349; *Neel* v. *Hibard*, 30 La. Ann. 309.

One of the difficulties in the petitioner's case is that the act of possession absolutely negatives the giving of it under a grant passing any interest in the lands. That act stated that those who are placed in possession are not "authorized to exchange, sell or alienate the same until they shall have acquired title," etc. A grant, therefore, would not be presumed even upon proof of exclusive and uninterrupted possession, so long as it was entirely consistent with the evidence produced in the case, which shows that it originated in a mere license, and there is no proof from which it can be claimed that its character changed from that of a licensee to that of